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Aeronautics and Space

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PART 1200 TO END
Revised as of January 1, 1986

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Aeronautics and Space

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thus: 14 CFR 1201.100

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986.

THIS TITLE

Title 14—Aeronautics and Space is composed of five volumes. The first three volumes contain Chapter I—Federal Aviation Administration (Parts 1-59, 60-139, and 140-199). The fourth volume contains Chapter II—Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200-1199) and the fifth volume contains Chapter V—National Aeronautics and Space Administration (Part 1200-end). The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

The fourth volume (Parts 200-1199) includes a redesignation table and a table showing the disposition of the Civil Aeronautics Board's regulations, effective January 1, 1985, upon the expiration of that agency.

For this volume, Beverly Fayson was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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PART 1200—[RESERVED]

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1201.402 NASA Industrial Applications Centers.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 50 FR 21235, May 23, 1985, unless otherwise noted.

Subpart 1—Introduction

§ 1201.100 Creation and authority.

The National Aeronautics and Space Administration was established by the National Aeronautics and Space Act of 1958 (72 Stat. 426, 42 U.S.C. 2451 *et seq.*), as amended (hereafter called the "Act").

§ 1201.101 Purpose.

It is the purpose of the National Aeronautics and Space Administration under the Act to carry out the declared policy of the United States that aeronautical and space activities sponsored by the United States shall be the responsibility of, shall be directed by, and shall be under the control of a civilian agency, except to the extent that aeronautical and space activities are determined by the President to be peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States, which activities shall be the responsibility of the Department of Defense.

§ 1201.102 Functions.

In order to carry out the purpose of the Act, NASA is authorized to conduct research into the problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate a space transportation system including the space shuttle, upper stages, space programs, and related equipment; and to perform such other activities as may be required for the exploration of space. The term "aeronautical and space vehicles" means aircraft, missiles, satellites, and other space vehicles, together with related equipment, devices, components, and parts.

§ 1201.103 Administration.

(a) NASA is headed by an Administrator, who is appointed from civilian life by the President by and with the consent of the Senate. The Administrator is responsible, under the supervision and direction of the President, for exercising all powers and discharging all duties of NASA.

(b) The Deputy Administrator of NASA is also appointed by the President from civilian life by and with the consent of the Senate. The Deputy Administrator acts with or for the Administrator within the full scope of the Administrator's responsibilities. In the Administrator's absence, the Deputy Administrator serves as Acting Administrator.

Subpart 2—Organization

§ 1201.200 General.

(a) Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters, located in Washington, DC. NASA Headquarters is comprised of:

(1) Six Program Offices which are responsible for planning and directing agencywide research and development programs, and management and administrative processes;

(2) Eight Staff Offices which provide agencywide leadership in certain administrative and specialized areas;

(3) The Office of the Associate Deputy Administrator;

(4) The Office of the Chief Engineer;

(5) The Office of the Chief Scientist; and

(6) The Office of Policy.

All of these offices report directly to the Administrator. Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. Certain types of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians. NASA's basic organization consists of the Headquarters, eight field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to heads of field installations. NASA's eight field installations have different and broad capabilities. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices. (NASA Management Instruction 1132.2.)

(b) The NASA field installations are as follows:

(1) Ames Research Center, Moffett Field, CA 94035.

(2) Goddard Space Flight Center, Greenbelt, MD 20771.

(3) John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(4) Langley Research Center, Langley Station, Hampton, VA 23665.

(5) Lewis Research Center, Cleveland, OH 44135.

(6) Lyndon B. Johnson Space Center, Houston, TX 77058.

(7) George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.

(8) National Space Technology Laboratories, NSTL Station, MS 39520.

For more detailed description of the organization and functions of the Headquarters and field installations, see the "U.S. Government Manual."

Subpart 3—Boards and Committees

§ 1201.300 Boards and committees.

Various boards and committees have been established as part of the permanent organization structure of NASA. These include:

(a) *Board of Contract Appeals.* (1) The Board is established in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601-613). The function of the Board is to decide any appeal from a decision of a contracting officer relating to a contract made by NASA.

(2) The charter of the Board is set forth in Subpart 1 of Part 1209 of this chapter. The Board's rules of procedure are set forth in 14 CFR Part 1241.

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board at NASA Headquarters, Washington, DC. Decisions and orders issued after July 4, 1967, are available for inspection and for purchase at NASA Information Centers. An Index/Digest of Decisions is issued periodically with supplements published as appropriate. These are available for inspection or purchase at the NASA Information Centers (see Subpart 4 of Part 1206 of this chapter) and from the Recorder of the NASA Board of Contract Appeals.

(b) *Contract Adjustment Board.* (1) The function of the Board is to consider and dispose of requests by NASA contractors for extraordinary contractual adjustments pursuant to Pub. L. 85-804 (50 U.S.C. 1431-35) and Executive Order 10789 dated November 14, 1958 (23 FR 8397).

(2) The charter of the Board is set forth at Subpart 3 of Part 1209 of this chapter. The Board's rules of procedure are set forth at 48 CFR chapter 18-50.306-70.

(3) Indexes of and texts of decisions of the Board are available for inspection and for purchase from the Chairperson of the Board, National Aeronautics and Space Administration,

Washington, DC 20546, and from the NASA Information Centers.

(c) *Inventions and Contributions Board.* (1) The function of the Board is to consider and recommend to the Administrator the action to be taken with respect to:

(i) Petitions for waiver of rights to any invention or class of inventions made during the performance of NASA contracts, and

(ii) Applications for award for scientific and technical contributions determined to have significant value in the conduct of aeronautical and space activities, pursuant to the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457 (f) and (g), 2458), and the Government Employees Incentive Awards Act (5 U.S.C. 2121-23), respectively.

(2) The charter of the Board is set forth at Subpart 4 of Part 1209 of this chapter. The Board's rules of procedure are set forth at 14 CFR Parts 1240 and 1245.

(3) The texts of key decisions and an index of all decisions of the Board on requests for waiver are published in Petitions for Patent Waiver (NASA Handbook 5500.1A) and are hereby incorporated by reference. These are available for inspection and for purchase at NASA Information Centers.

Subpart 4—General Information

§ 1201.400 NASA procurement program.

(a) The Office of Procurement, headed by the Assistant Administrator for Procurement, serves as a central point of control and contact for NASA procurements. Although the procurements may be made by the field installations, selected contracts and contracts of special types are required to be approved by the Assistant Administrator for Procurement prior to their execution. The Office of Procurement is also responsible for formulation of NASA procurement policies and provides overall assistance and guidance to NASA field installations to achieve uniformity in NASA procurement processes.

(b) The NASA procurement program is carried out principally at the NASA field installations listed in the "U.S. Government Manual," and in Subpart 2 of this part. The Headquarters Contracts and Grants Division is responsible for contracts with foreign governments and foreign commercial organizations, grants and cooperative agreements, and the procurement of materials and services required by Headquarters offices except for minor office supplies and services procured locally.

(c) All procurements are made in accordance with the Federal Acquisition Regulation (FAR) (48 U.S.C. Chapter 1) and the Federal Acquisition Regulation Supplement (NASA FAR Supplement) (48 U.S.C. Chapter 18). Copies of these publications are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on an annual subscription basis.

§ 1201.401 Special document depositories.

NASA provides the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, with copies of NASA or NASA-sponsored unclassified unlimited documents to provide availability to the public. These documents may be reproduced by NTIS and sold at prices established by NTIS. NASA also uses the regional depository libraries established through the Federal Depository Library Program by Chapter 19 of Title 44 of the U.S. Code under the Government Printing Office (GPO) to make its technical documents and bibliographic tools available to the general public. These depository libraries are responsible for permanent retention of material, interlibrary loan, and reference services.

§ 1201.402 NASA Industrial Applications Centers.

As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee-paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests and assist in interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(a) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 611 N. Capital Avenue, Indianapolis, IN 46204

(b) NASA Florida State Technology Applications Center, State University System of Florida, 307 Weil Hall, Gainesville, FL 32611

(c) NASA/UK Technology Applications Program, University of Kentucky, 109 Kinkead Hall, Lexington, KY 40506-0057

(d) NASA Industrial Applications Center, 823 William Pitt Union, University of Pittsburgh, Pittsburgh, PA 15260

(e) New England Research Application Center (NERAC), Mansfield Professional Park, Storrs, CT 06268

(f) North Carolina Science and Technology Research Center (NC/STRC), P.O. Box 12235, Research Triangle Park, NC 27709

(g) Technology Application Center (TAC), University of New Mexico, Albuquerque, NM 87131

(h) Kerr Industrial Applications Center (KIAC), Southeastern Oklahoma State University, Station A, Box 2584, Durant, OK 74701

(i) NASA Industrial Applications Center (WESRAC), University of Southern California, Research Annex, 3716 South Hope Street, Room 200, Los Angeles, CA 90007.

PART 1203—INFORMATION SECURITY PROGRAM

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AUTHORITY: 42 U.S.C. 2451 *et seq.* and E.O. 12356.

SOURCE: 44 FR 34913, June 18, 1979, unless otherwise noted.

Subpart A—Scope

§ 1203.100 Legal basis.

(a) *Executive Order 12356 (hereinafter referred to as "the Order").* The responsibilities and authority of the Administrator of NASA with respect to the original classification of official information or material requiring protection against unauthorized disclosure in the interest of national defense or foreign relations of the United States (hereinafter collectively termed "national security"), and the standards for such classification, are established by the "the Order" (47 FR 14874) and the Information Security Oversight Office Directive No. 1, June 25, 1982;

(b) *E.O. 10865.* Executive Order 10865 (24 FR 1583) requires the Administrator to prescribe by regulation such specific requirements, restrictions and other safeguards as the Administrator may consider necessary to protect:

(1) Releases of classified information to or within United States industry that relate to contracts with NASA; and

(2) Other releases of classified information to industry that NASA has responsibility for safeguarding.

(c) *The National Aeronautics and Space Act.* (1) Section 304(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.), states in part: "The Administrator shall establish such security requirements, restrictions, and safeguards as he deems necessary in the interest of the national security * * *"

(2) Section 303 of the Act states: "Information obtained or developed by the Administrator in the performance of his functions under this Act shall be made available for public inspection, except (i) information authorized or required by Federal Statute to be withheld, and (ii) information classified to protect the national security: *Provided,* That nothing in this Act shall authorize the withholding of information by the Administrator from the duly authorized committees of the Congress."

[44 FR 34913, June 18, 1979, as amended at 48 FR 5889, Feb. 9, 1983]

§ 1203.101 Other applicable NASA regulations.

(a) Subpart H of this part, "Delegation of Authority to Make Determinations in Original Security Classification Matters."

(b) Subpart I of this part, "NASA Information Security Program Committee."

(c) NASA Handbook 1620.3, "NASA Physical Security Handbook."

Subpart B—NASA Information Security Program

§ 1203.200 Background and discussion.

(a) In establishing a civilian space program, the Congress required NASA to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof," and for the withholding from public inspection of that information that is classified to protect the national security.

(b) In recognition of the essential requirement for an informed public concerning the activities of its Government, as well as the need to protect certain national security information from unauthorized disclosure, "the Order" was promulgated. It designates the National Aeronautics and Space Administration certain responsibility for matters pertaining to national security and confers on the Administrator of NASA, or such responsible officers or employees as the Administrator may designate, the authority for original classification of official information or material which requires protection in the interest of national security. It also provides for:

(1) Basic classification, downgrading and declassification guidelines;

(2) The issuance of directives prescribing the procedures to be followed in safeguarding classified information or material;

(3) A monitoring system to ensure the effectiveness of the Order;

(4) Appropriate administrative sanctions against officers and employees of the United States Government who are found to be in violation of the Order or implementing directive; and

(5) Classification limitations and restrictions as discussed in §§ 1203.410 and 1203.411.

(c) "The Order" requires the timely identification and protection of that NASA information the disclosure of which would be contrary to the best interest of national security. Accordingly, the determination in each case must be based on a judgment as to whether disclosure of information could reasonably be expected to result in damage to the national security.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5889, Feb. 9, 1983]

§ 1203.201 Information security objectives.

The objectives of the NASA Information Security Program are to:

(a) Ensure that information is classified only when a sound basis exists for such classification and only for such period as is necessary.

(b) Prevent both the unwarranted classification and the overclassification of NASA information.

(c) Ensure the greatest practicable uniformity within NASA in the classification of information.

(d) Ensure effective coordination and reasonable uniformity with other Government departments and agencies, particularly in areas where there is an interchange of information, techniques or hardware.

(e) Provide a timely and effective means for downgrading or declassifying information when the circumstances necessitating the original classification change or no longer exist.

§ 1203.202 Responsibilities.

(a) The Chairperson, NASA Information Security Program Committee (Subpart I of this part), is responsible for:

(1) Directing the NASA Information Security Program in accordance with NASA policies and objectives and applicable laws and regulations.

(2) Ensuring effective compliance with and implementation of "the Order" and the Information Security Oversight Office Directive No. 1 relating to security classification matters.

(3) Reviewing, in consultation with the NASA Information Security Program Committee, questions, suggestions, appeals and compliance concerning the NASA Information Security Program and making determinations concerning them.

(4) Coordinating NASA security classification matters with NASA installations, the Department of Defense, the Department of Energy and other Government agencies.

(5) Issuing Security Classification Guides for NASA programs and projects.

(6) Developing, maintaining and recommending to the Administrator guidelines for the systematic review covering 30-year-old classified information under NASA's jurisdiction.

(7) Reviewing and coordinating with appropriate offices all appeals of denials of requests for records under sections 552 and 552a of Title 5, United States Code (Freedom of Information and Privacy Acts) when the denials are based on the records continued classification.

(8) Recommending to the Administrator appropriate administrative action to correct abuse or violations of any provision of the NASA Information Security Program, including notifications by warning letter, formal reprimand and to the extent permitted by law, suspension without pay and removal.

(b) All NASA employees are responsible for bringing to the attention of the Chairperson of the NASA Information Security Program Committee any information security problems in need of resolution, any areas of interest wherein information security guidance is lacking, and any other matters likely to impede achievement of the objectives prescribed herein.

(c) Each NASA official to whom the authority for original classification is delegated shall be accountable for the propriety of each classification (see Subpart H) and is responsible for:

(1) Ensuring that classification determinations are consistent with the policy and objectives prescribed above, and other applicable guidelines.

(2) Bringing to the attention of the Chairperson, NASA Information Security Program Committee, for resolution, any disagreement with classification determinations made by other NASA officials.

(3) Ensuring that information and material which no longer requires its present level of protection is promptly downgraded or declassified in accordance with applicable guidelines.

(d) Other Officials-in-Charge of Headquarters Offices are responsible for:

(1) Ensuring that classified information or material prepared within their respective offices is appropriately marked.

(2) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(e) Directors of Field Installations are responsible for:

(1) Developing proposed Security Classification Guides.

(2) Ensuring that classified information or material prepared in their respective installations is appropriately marked.

(3) Ensuring that material proposed for public release is reviewed to eliminate classified information.

(4) Designating Security Classification Officers at their respective installations, to whom responsibilities listed in paragraphs (e) (1), (2), and (3) of this section may be reassigned.

(f) The NASA Security Classification Manager, NASA Security Office, NASA Headquarters, who serves as a member and Executive Secretary of the NASA Information Security Program Committee, is responsible for the NASA-wide coordination of security classification matters.

(g) The Chief, NASA Security Office, is responsible for establishing procedures for the safeguarding of classified information or material (e.g., accountability, control, access, storage, transmission, and marking) and for ensuring that such procedures are systematically reviewed; and those which are duplicative or unnecessary are eliminated.

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5890, Feb. 9, 1983]

§ 1203.203 Degree of protection.

(a) *General.* Upon determination that information or material must be classsified, the degree of protection commensurate with the sensitivity of the information must be determined. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by an original classification authority, who shall make this determination within 30 days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within 30 days.

(b) *Authorized categories of classification.* The three categories of classification, as authorized and defined in "the Order," are set out below. No other restrictive markings are authorized to be placed on NASA classified documents or materials except as expressly provided by statute or by NASA Directives.

(1) *Top Secret.* Top Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(2) *Secret.* Secret is the designation applied to information or material the unathorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence op-

erations; and compromise of significant scientific or technological develpments relating to national security.

(3) *Confidential.* Confidential is the designation applied to that information or material for which the unauthorized disclosure could reasonably be expected to cause damage to the national security.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

Subpart C—Classification Principles and Considerations

§ 1203.300 General.

In general, the types of NASA-generated information and material requiring protection in the interest of national security lie in the areas of applied research, technology or operations.

§ 1203.301 Identification of information requiring protection.

Classifiers shall identify the level of classification of each classified portion of a document (including subject and titles), and those portions that are not classified.

§ 1203.302 Combination, interrelation or compilation.

An interrelationship of individual items, classified or unclassified, may result in a combined item requiring a higher classification than that of any of the individual items. Compilations of unclassified information are considered unclassified unless some additional significant factor is added in the process of compilation. For example:

(a) The way unclassified information is compiled may be classified;

(b) The fact that the information is complete for its intended purpose may be classified; or

(c) The fact the compilation represents an official evaluation may be classified. In these cases, the compilations would be classified.

§ 1203.303 Dissemination considerations.

The degree of intended dissemination, use of the information and whether the end purpose to be served renders effective security control impractical are considerations during the classification process. These factors do not necessarily preclude classification, but must be considered in order not to impose security controls which are impractical to enforce.

§ 1203.304 Internal effect.

The effect of security protection on program progess and cost and on other functional activities of NASA should be considered. Impeditive effects and added costs inherent in a security classification must be assessed in light of the detrimental effects on the national security interests which would result from failure to classify.

§ 1203.305 Restricted data.

Restricted Data or Formerly Restricted Data is so classified when originated, as required by the Atomic Energy Act of 1954, as amended. Specific guidance for the classification of Restricted Data is provided in "Classification Guides" published by the Department of Energy.

Subpart D—Guides for Original Classification

§ 1203.400 Specific classifying guidance.

Technological and operational information and material, and in some exceptional cases scientific information falling within any one or more of the following categories, must be classified if its unauthorized disclosure could reasonably be expected to cause damage to the national security. In cases where it is believed that a contrary course of action would better serve the national interests, the matter should be referred to the Chairperson, NASA Information Security Program Committee, for a determination. It is not intended that this list be exclusive; original classifiers are responsible for initially classifying any other type of information which, in their judgment, requires protection under "the Order."

(a) Information which provides the United States, in comparison with other nations, with a significant scientific, engineering, technical, operational, intelligence, strategic, tactical or economic advantage related to national security.

(b) Information which, if disclosed, would significantly diminish the technological lead of the United States in any military system, subsystem or component, and would result in damage to such a system, subsystem or component.

(c) Scientific or technological information in an area where an advanced military application that would in itself be classified is foreseen during exploratory development.

(d) Information which, if known, would:

(1) Provide a foreign nation with an insight into the defense application or the war or defense plans or posture of the United States;

(2) Allow a foreign nation to develop, improve or refine a similar item of defense application;

(3) Provide a foreign nation with a base upon which to develop effective countermeasures;

(4) Weaken or nullify the effectiveness of a defense or military plan, operation, project, weapon system or activity which is vital to the national security.

(e) Information or material which is important to the national security of the United States in relation to other nations when there is sound reason to believe that those nations are unaware that the United States has or is capable of obtaining the information or material; i.e., through intelligence activities, sources, or methods.

(f) Information which if disclosed could be exploited in a manner prejudicial to the national security posture of the United States by discrediting its technological power, capability or intentions.

(g) Information which reveals an unusually significant scientific or technological "breakthrough" which there is sound reason to believe is not known to or within the state-of-the-art capability of other nations. If the "breakthrough" supplies the United States with an important advantage of a technological nature, classification also would be appropriate if the potential application of the information, although not specifically visualized, would afford the United States a significant national security advantage in terms of technological lead time or an economic advantage relating to national security.

(h) Information of such nature that an unfriendly government in possession of it would be expected to use it for purposes prejudicial to U.S. national security and which, if classified, could not be obtained by an unfriendly power without a considerable expenditure of resources.

(i) Information which if disclosed to a foreign government would enhance its military research and development programs to the detriment of U.S. counterpart or competitive programs.

(j) Operational information pertaining to the command and control of space vehicles, the possession of which would facilitate malicious interference with any U.S. space mission, that might result in damage to the national security.

(k) Information which if disclosed could jeopardize the foreign relations or activities of the United States; for example, the premature or unauthorized release of information relating to the subject matter of international negotiations, foreign government information or information regarding the placement or withdrawal of NASA tracking stations on foreign territory.

(l) United States Government programs for safeguarding nuclear materials or facilities.

(m) Other categories of information which are related to national security and which require protection against unauthorized disclosure as may be determined by the Administrator. The Chairperson, NASA Information Security Program Committee, will promptly inform the Director, Information Security Oversight Office, General Services Administration (GSA) of such determinations.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

§ 1203.401 Effect of open publication.

Public disclosure, regardless of source or form, of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosure requires an immediate reevaluation to determine whether the information has been compromised to the extent that downgrading or declassification is indicated. Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. In these cases, if a release were made or authorized by an official Government source, classification of clearly identified items may no longer be warranted. Questions as to the propriety of continued classification should be referred to the Chairperson, NASA Information Security Program Committee.

§ 1203.402 Classifying material other than documentation.

Items of equipment or other physical objects may be classified only where classified information may be derived by visual observation of internal or external appearance, structure, operation, test, application or use. The overall classification assigned to equipment or objects shall be at least as high as the highest classification of any of the items of information which may be revealed by the equipment or objects, but may be higher if the classifying authority determines that the sum of classified or unclassified information warrants such higher classification. In every instance where classification of an item of equipment or object is determined to be warranted, such determination must be based on a finding that there is at least one aspect of the item or object which requires protection. If mere knowledge of the existence of the equipment or object would compromise or nullify the reason or justification for its classification, the fact of its existence should be classified.

§ 1203.403 State-of-the-art and intelligence.

A logical approach to classification requires consideration of the extent to which the same or similar information available from intelligence sources is known or is available to others. It is also important to consider whether it is known publicly, either domestically or internationally, that the United States has the information or even is interested in the subject matter. The known state-of-the-art in other nations is an additional substantive factor requiring consideration.

§ 1203.404 Handling of unprocessed data.

It is the usual practice to withhold the release of raw scientific data received from spacecraft until it can be calibrated, correlated and properly interpreted by the experimenter under the monitorship of the cognizant NASA office. During this process, the data are withheld through administrative measures, and it is not necessary to resort to security classification to prevent premature release. However, if at any time during the processing of raw data it becomes apparent that the results require protection under the criteria set forth in this Subpart D, it is the responsibility of the cognizant NASA office to obtain the appropriate security classification.

§ 1203.405 Proprietary information.

Proprietary information made available to NASA is subject to examination for classification purposes under the criteria set forth in this Subpart D. Where the information is in the form of a proposal and accepted by NASA for support, it should be categorized in accordance with the criteria of § 1203.400. If NASA does not support the proposal but believes that security classification would be appropriate under the criteria of § 1203.400 if it were under Government jurisdiction, the contractor should be advised of the reasons why safeguarding would be appropriate, unless security considerations preclude release of the explanation to the contractor. NASA should identify the Government department, agency or activity whose national security interests might be involved and the contractor should be instructed to protect the proposal as though classified pending further advisory classification opinion by the Government activity whose interests are involved. If such a Government activity cannot be identified, the contractor should be advised that the proposal is not under NASA jurisdiction for classification purposes, and that the information should be sent, under proper safeguards, to the Director, Information Security Oversight Office, General

Services Administration, Washington, D.C. 20405, for a determination.

§ 1203.406 Additional classification factors.

In determining the appropriate classification category, the following additional factors should be considered:

(a) *Uniformity within government activities.* The effect classification will have on technological programs of other Government departments and agencies should be considered. Classification of official information must be reasonably uniform within the Government.

(b) *Applicability of Classification Directives of Other Government Agencies.* It is necessary to determine whether authoritative classification guidance exists elsewhere for the information under consideration which would make it necessary to assign a higher classification than that indicated by the applicable NASA guidance. Generally, the classification by NASA should not be higher than that of equivalent information in other departments or agencies of the Government.

§ 1203.407 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of the "the Order."

[48 FR 5890, Feb. 9, 1983]

§ 1203.408 Assistance by installation security classification officers.

Installation Security Classification Officers, as the installation point-of-contact, will assist installation personnel in:

(a) Interpreting security classification guides and classification assignments for the installation.

(b) Answering questions and considering suggestions concerning security classification matters.

(c) Ensuring a continuing review of classified information for the purpose of declassifying or downgrading in accordance with Subpart E of this part.

(d) Reviewing and approving, as the representative of the contracting officer, the DD Form 254, Contract Security Classification Specification, issued to contractors by the installation.

§ 1203.409 Exceptional cases.

(a) In those cases where a person not authorized to classify information orginates or develops information which is believed to require classification, that person should safeguard the material as though it were classified until it has been evaluated and a decision made by an appropriate classifying authority. For NASA employees the classifying authority is normally the Installation Security Classification Officer. Persons other than NASA employees should forward, under appropriate safeguards, material in which NASA has primary interest to the NASA Information Security Program Committee, Security Division, Washington, DC 20546 for a classification determination.

(b) Information in which NASA does not have primary interest shall be returned promptly, under appropriate safeguards, to the sender in accordance with § 1203.405.

(c) Material received from another agency for a NASA security classification determination shall be processed within 30 days. If a classification cannot be determined during that period, the material shall be sent, under appropriate safeguards, to the Director, Information Security Oversight Office, GSA, for a determination.

§ 1203.410 Limitations.

(a) Classification may not be used to conceal violations of law, inefficiency of administrative error; to prevent embarrassment to a person, organization or agency; or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Part 1203 until and unless the Government acquires a proprietary interest in the product. This part does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181-188).

(d) References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this part or to prevent or delay the public release of such information.

(f) Information may be classified or reclassified after receipt of a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of "the Order" if such classification meets the requirements of "the Order" and is accomplished personally on a document-by-document basis by an official with original Top Secret classification authority.

(g) The Administrator, the Chairperson, NASA Information Security Program Committee, or an official with original Top Secret classification authority may reclassify information previously declassified and disclosed if it is determined in writing that (1) The information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office, GSA.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5890, Feb. 9, 1983]

§ 1203.411 Restrictions.

(a) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this section, the Department of Defense shall be considered one agency.

(b) Classified information shall not be disseminated outside the Executive Branch except under conditions that ensure the information will be given protection equivalent to that afforded within the Executive Branch.

[48 FR 5890, Feb. 9, 1983]

§ 1203.412 Classification guides.

(a) *General.* A classification guide, based upon classification determinations made by appropriate program and classification authorities, shall be issued for each classified system, program or project. Classification guides shall:

(1) Identify the information elements to be protected, using categorization and subcategorization to the extent necessary to ensure that the information involved can be readily and uniformly identified.

(2) State which of the classification designations (i.e., Top Secret, Secret or Confidential) apply to the identified information elements.

(3) State the duration of each specified classification in terms of a period of time or future event. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be used: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

(4) Indicate specifically that the designations, time limits, markings and other requirements of "the Order" are to be applied to information classified pursuant to the guide.

(5) Be approved personally and in writing by an official with original Top Secret classification authority; the identity of the official will be shown on the guide. Such approval constitutes an original classification decision. Normally, all guides will be approved by the Chairperson, NASA Information Security Program Committee, whose office will maintain a list of all classification guides in current use.

(b) *Review of classification guides.* Classification guides shall be reviewed by the originator for currency and accuracy not less than once every two years. Changes shall be in strict conformance with the provisions of this Part 1203 and shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

[44 FR 34912, June 18, 1979, as amended at 48 FR 5891, Feb. 9, 1983]

Subpart E—Derivative Classification.

§ 1203.500 Use of derivative classification.

The application of derivative classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized original classifier or in accordance with an authorized classification guide. If a person who applied derivative classification markings believes that the paraphrasing, restating, or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult for a determination with an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade, or declassify the information.

[48 FR 5891, Feb. 9, 1983]

§ 1203.501 Applying derivative classification markings.

Persons who apply derivative classification markings shall:

(a) Observe and respect original classification decisions:

(b) Verify the information's current level of classification so far as practicable before applying the markings; and

(c) Carry forward to newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5891, Feb. 9, 1983]

Subpart F—Declassification and Downgrading

§ 1203.600 Policy.

Information shall be declassified or downgraded as soon as national security considerations permit. NASA reviews of classified information shall be coordinated with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by § 1203.400 despite the passage of time will continue to be protected in accordance with "the Order."

[48 FR 5891, Feb. 9, 1983]

§ 1203.601 Responsibilities.

Officials authorized original classification authority may declassify or downgrade information that is subject to the final classification jurisdiction of NASA and shall take such action in accordance with the provisions of this Subpart F.

§ 1203.602 Authorization.

Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position, the originator's successor, a supervisory official of either, or officials delegated such authority in writing by the Administrator or the Chairperson, NASA Information Security Program Committee.

[48 FR 5891, Feb. 9, 1983]

§ 1203.603 Systematic review for declassification.

(a) *General.* (1) Except for foreign government information as provided in Subpart G of this part, classified information constituting permanently valuable records of the government as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services Administration pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes 30 years old.

(2) Systematic review for declassification of classified cryptologic infor-

mation will be coordinated through the National Security Agency.

(3) Systematic review for declassification of classified information pertaining to intelligence activities (including special activities) or intelligence sources or methods will be coordinated through the Central Intelligence Agency.

(4) The Chairperson, NASA Information Security Program Committee, shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 30-year old U.S. originated information and 30-year old foreign information. Such personnel shall:

(i) Provide guidance and assistance to National Archives and Records Service employees in identifying and separating documents and specific categories of information within documents which are deemed to require continued classification; and

(ii) Develop reports of information or document categories so separated, with recommendations concerning continued classification.

(b) *Systematic review guidelines.* The Chairperson, NASA Information Security Program Committee, shall develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of 30-year old classified information under NASA's jurisdiction. (See Subpart G of this part, Foreign Government Information.) The guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond 30 years is needed. These guidelines are authorized for use by the Archivist of the United States and, with the approval of the Administrator, by an agency having custody of the information covered by the guidelines. All information, except foreign government information, cryptologic information, and information pertaining to intelligence sources or methods, not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of 30 years from the date of original classification. These guidelines shall be reviewed at least every 5 years and revised as necessary unless an earlier review for revision is requested by the Archivist of the United States. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, GSA.

(c) *Systematic review procedures.* (1) All security classified records 30 years old or older, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to identify those that require scheduling for future disposition.

(2) All NASA information or material in the custody of the National Archives and Records Service that is permanently valuable and more than 30 years old is to be systematically reviewed for declassification by the Archivist of the United States with the assistance of the personnel designated for the purpose pursuant to paragraph (a)(4)(i) of this section. The Archivist shall refer to NASA that information or material which NASA has indicated requires further review. In the case of 30-year old information or material in the custody of NASA installations, such review will be accomplished by the custodians of the information or material. The installation having primary jurisdication over the information or material received from the Archivist or in its custody, shall proceed as follows:

(i) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines developed under paragraph (b) of this section shall be so marked.

(ii) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under paragraph (b) of this section, is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(A) Identify the information or material involved.

(B) Recommend classification beyond 30 years to a specific event scheduled to happen or a specific period of time or, the alternative, recommend: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

(iii) The Administrator shall consider and determine which category shall be kept classified and the dates or event for declassification. Whenever a specific time or future event for declassification cannot be predetermined, the following notation will be applied: DECLASSIFY ON: Originating Agency's Determination Required or "OADR." The Archivist of the United States will be notified in writing of this decision.

(d) *Declassification by the Director of the Information Security Oversight Office, GSA.* If the Director of the Information Security Oversight Office, GSA, determines that NASA information is classified in violation of "the Order," the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA Information Security Program Committee to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

[48 FR 5891, Feb. 9, 1983]

§ 1203.604 Mandatory review for declassification.

(a) *Information covered.* All information classified under "the Order" or predecessor orders, except as provided at § 1203.604(b) shall be subject to a review for declassification by the originating agency, if:

(1) The request is made by a United States citizen or permanent resident alien, a Federal agency, or a State or local government; and

(2) The request describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. After review, the information or any reasonable segregable portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(b) *Presidential papers.* (1) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provisions of § 1203.604(a).

(2) The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services Administration or the Archivist pursuant to sections 2107, 2107 note, or 2203 of Title 44, U.S. Code. Review procedures developed by the Archivist shall provide for consultation with NASA in matters of primary subject interest to NASA.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA installation which originated the information.

(2) For most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to NASA installations which originated the material, or, if the originating component is not known, the requestor may submit the request to:

(i) The Chairperson, NASA Information Security Program Committee; or the head of the NASA organization most concerned with the subject matter of the material requested; or

(ii) The office designated to receive requests for records under the Freedom of Information Act pursuant to Part 1206 of this chapter.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act shall be processed in accordance with Part 1206 of this chapter.

(2) Other requests for declassification review and release of information shall be processed in accordance with the provisions of this section, subject to the following conditions:

(i) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the installation to identify it.

(ii) The requestor shall be asked to correct a request that does not comply with paragraph (d)(2)(i) of this section, to provide additional information or to narrow the scope of the request and shall be notified that no action will be taken until the requestor complies.

(iii) If the request requires the rendering of services for which fees may not be charged under Part 1206, but may be charged under 31 U.S.C. 483a (1976), the rates prescribed in § 1206.700 shall be used, if appropriate.

(e) *Processing of requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) NASA installation action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA installation shall determine whether, under the declassification provisions of this Part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 30 days after receipt and the requestor shall be advised that the appeal determination is final. If continued classification is required under the provisions of this Part 1203, the requestor shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with § 1203.703.

(5) When a NASA installation receives any request for declassification of information in documents in its custody that was classified by another NASA installation or Government agency, it shall refer copies of the request and the requested documents to the originating installation or agency for processing, and may, after consultation with the originating installation or agency, inform the requester of the referral. In cases in which the originating NASA installation determines in writing that a response under § 1203.604(f) is indicated, such cases will be promptly forwarded to the Chairperson, NASA Information Security Program Committee, for final resolution and appropriate response.

(f) *Neutral response.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of "the Order," NASA shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under "the Order."

(g) *Declassification of transferred documents or material*—(1) *Material officially transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material not officially transferred.* When any NASA installation has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency, or when it is impossible for the possessing NASA installation to identify the originating agency, and a review of the material indicates that it should be downgraded or declassified, the possessing NASA installation shall be deemed to be the originating agency for the purpose of de-

classifying or downgrading such material. If it appears probable that another agency or another NASA organization may have a substantial interest in whether the classification of any particular information should be maintained, the possessing NASA installation shall not exercise the power conferred upon it by this paragraph, until after consultation with any other agency or NASA organization having an interest in the subject matter.

(3) *Transfer for storage or retirement.* (i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification determination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with "the Order," the directives of the Information Security Oversight Office, GSA, and NASA guidelines.

(h) *Downgrading and declassification actions*—(1) *Notification of changes in classification or declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing 20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5892, Feb. 9, 1983]

Subpart G—Foreign Government Information

§ 1203.700 Identification.

In order to qualify as foreign government information, information must fall into one of the two following categories:

(a) Information provided to the United States by a foreign government or international organization of governments, such as the North Atlantic Treaty Organizatiuon (NATO), where the United States has undertaken an obligation, expressed or implied, to keep the information in confidence. The information is considered to have been provided in confidence if it is marked in a manner indicating it is to be treated in confidence or if the circumstances of the delivery indicate that the information be kept in confidence.

(b) Information requiring confidentiality produced by the United States pursuant to a written, joint arrangement with a foreign government or international organization of governments. A written, joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record of the joint arrangement.

§ 1203.701 Classification.

(a) Foreign government information that is classified by a foreign entity shall either retain its original classification designation or be marked with a United States classification designation that will ensure a degree of protection equivalent to that required by the entity that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided to NASA with the expressed or implied obligation that it be held in confidence must be classified. "The Order" states that unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security. Therefore, such foreign government information shall be classified at least Confidential. However, at the time of classification, judicious consideration shall be given to the sensitivity of the subject matter and the impact of its unauthorized disclosure upon both the United States and the originating foreign government or organization of governments in order to determine the most appropriate level of classification. Levels above Confidential must be assigned by an original classification authority.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5892, Feb. 9, 1983]

§ 1203.702 Duration of classification.

Unless the guidelines for the systematic review of 30-year old foreign government information developed pursuant to § 1203.603(b) prescribe dates or events for declassification:

(a) Foreign government information shall not be assigned a date or event for declassification unless such is specified or agreed to by the foreign entity.

(b) Foreign government information classified after December 1, 1978, shall be annotated: DECLASSIFY ON: Originating Agency's Determination Required or "OADR."

[48 FR 5893, Feb. 9, 1983]

§ 1203.703 Declassification.

(a) Information classified in accordance with § 1203.400 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

(b) Following consultation with the Archivist of the United States and where appropriate, with the foreign government or international organization concerned and with the assistance of the Department of State, NASA will issue guidelines for the systematic review of 30-year old foreign government information that will apply to foreign government information of primary concern to NASA. These guidelines are authorized for use by the Archivist of the United States and, with the approval of NASA, by an agency having custody of such information. The Chairperson, NASA Information Security Program Committee, will initiate administrative functions necessary to effect review of these guidelines at least once every 5 years and submit recommendations to the Administrator based on these reviews. If, after applying the guidelines to 30-year old foreign government information, a determination is made by the reviewer that classification is necessary, a date for declassification or DECLASSIFY ON: Originating Agency's Determination Required or "OADR" shall be shown on the face of the document.

(c) Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 1203.603 except that foreign government information will be declassified only in accordance with the guidelines developed for that purpose under § 1203.702 and after consultation with other Government agencies with subject matter interest as necessary. In those cases where these guidelines cannot be applied to the foreign government information requested, the foreign originator normally should be consulted, through appropriate channels, prior to final action on the request. However, when the responsible NASA installation knows the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator is not necessary.

(d) Requests for mandatory review for declassification of foreign government information which NASA has not received or classified shall be referred to the Government agency having a primary interest. The requestor shall be advised of the referral.

[44 FR 34913, June 18, 1979, as amended at 48 FR 5893, Feb. 9, 1983]

Subpart H—Delegation of Authority to Make Determinations in Original Classification Matters

AUTHORITY: 42 U.S.C. 2451 et seq., and E.O. 12356.

SOURCE: 47 FR 57909, Dec. 29, 1982, unless otherwise noted.

§ 1203.800 Delegations.

(a) The NASA officials listed in paragraph (b) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations and they shall be subject to any contrary determination that has been made by the Chairperson of the NASA Information Security Program Committee or by any other NASA official authorized to make such a determination.

(b) Designated Officials. (1) *TOP SECRET Classification Authority.*

(i) Administrator.

(ii) Deputy Administrator.

(iii) Associate Deputy Administrator.

(iv) Chairperson, NASA Information Security Program Committee.

(2) *SECRET and CONFIDENTIAL Classification Authority.* (i) Officials listed in paragraph (b)(1) of this section.

(ii) Associate Administrator for Space Flight.

(iii) Associate Administrator for Space Science and Applications.

(iv) Associate Administrator for External Relations.

(v) Associate Administrator for the Management.

(vi) Associate Administrator for Aeronautics and Space Technology.

(vii) Associate Administrator for Space Tracking and Data Systems.

(viii) General Counsel.

(ix) Chief, NASA Security Office.

(x) Director, International Affairs Division.

(xi) NASA Security Classification Manager.

(xii) Field Installation Directors.

(xiii) Manager, NASA Resident Office—JPL.

(xiv) Installation Security Classification Officers.

(xv) Such other officials as may be delegated original classification authority.

(c) Written requests for original classification authority shall be forwarded to the Executive Secretary, NASA Information Security Program Committee with appropriate justification appended thereto. The Executive Secretary will submit such requests to the Committee Chairperson for a determination by the Committee regarding the validity of the requests. Findings and recommendations of the Committee will then be submitted by the Committee Chairperson to the Administrator for approval.

(d) The Executive Secretary shall maintain a list of all delegations of original classification authority by name or title of the position held.

(e) The NASA Information Security Program Committee shall conduct periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated herein shall ensure that feedback is provided to the Administrator through the NASA Information Security Program Committee. The Chairperson of the Committee shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Subpart I—NASA Information Security Program Committee

Authority: 42 U.S.C. 2473; E.O. 12356.

Source: 47 FR 57910, Dec. 29, 1982, unless otherwise noted.

§ 1203.900 Establishment.

Pursuant to Executive Order 12356, "National Security Information," and the National Aeronautics and Space Act of 1958, as amended, there is established a NASA Information Security Program Committee (hereinafter referred to as the Committee) as part of the permanent administrative structure of NASA. The Director, DOD Affairs Division, is designated to act as the Chairperson of the Committee. The Head, Classification Management and Physical Security Section, NASA Security Office, is designated to act as the Committee Executive Secretary.

§ 1203.901 Responsibilities.

(a) The Chairperson reports to the Administrator concerning the management and direction of the NASA Information Security Program as provided for in Subpart B of this part. In this connection, the Chairperson is supported and advised by the Committee.

(b) The Committee shall act on all appeals from denials of declassification requests on all suggestions and complaints with respect to administration of the NASA Information Security Program as provided for in Subpart B of this part.

(c) The Executive Secretary of the Committee shall maintain all records produced by the Committee, its subcommittees, and its ad hoc panels.

(d) The NASA Security Office, NASA Headquarters, will provide staff assistance and support services for the Committee.

§ 1203.902 Membership.

The Committee will be comprised of the Chairperson, Executive Secretary, and one member designated by each of the following NASA officials:

(a) Associate Administrators for:

(1) Aeronautics and Space Technology.

(2) Space Science and Applications.

(3) Space Flight.

(4) Space Tracking and Data Systems.

(5) Management.

(6) External Relations.

(b) Associate Deputy Administrator.

(c) General Counsel.

§ 1203.903 Ad hoc committees.

The Chairperson is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee's work.

§ 1203.904 Meetings.

(a) Meetings will be held at the call of the Chairperson.

(b) Records produced by the Committee and the minutes of each meeting will be maintained by the Executive Secretary.

PART 1203a—NASA SECURITY AREAS

Sec.
1203a.100 Purpose and scope.
1203a.101 Definitions.
1203a.102 Establishment, maintenance, and revocation of security areas.
1203a.103 Access to security areas.
1203a.104 Violation of security areas.
1203a.105 Implementation by field and component installations.

Authority: 18 U.S.C. 799.

SOURCE: 38 FR 8056, Mar. 28, 1973, unless otherwise noted.

§ 1203a.100 Purpose and scope.

(a) To insure the uninterrupted and successful accomplishment of the NASA mission, certain designated security areas may be established and maintained by NASA installations and component installations in order to provide appropriate and adequate protection for facilities, property, or classified information and material in the possession or custody of NASA or NASA contractors located at NASA installations and component installations.

(b) This Part 1203a sets forth:

(1) The designation and maintenance of security areas,

(2) The responsibilities and procedures in connection therewith, and

(3) The penalties that may be enforced through court actions against unauthorized persons entering security areas.

§ 1203a.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Security area.* A physically defined area, established for the protection or security of facilities, property, or classfied information and material in the possession or custody of NASA or a NASA contractor located at a NASA installation or component installation, entry to which is subject to security measures, procedures, or controls. Security areas which may be established are:

(1) *Restricted area.* An area wherein security measures are applied primarily for the safeguarding or the administrative control of property or to protect operations and functions which are vital or essential to the accomplishment of the mission assigned to a NASA installation or component installation.

(2) *Limited area.* An area wherein security measures are applied primarily for the safeguarding of classified information and material or unclassified property warranting special protection and in which the uncontrolled movement of visitors would permit access to such classified information and material or property, but within which area such access may be prevented by appropriate visitor escort and other internal restrictions and controls.

(3) *Closed area.* An area wherein security measures are applied primarily for the purpose of safeguarding classified information and material; entry to the area being equivalent, for all practical purposes, to access to such classified information and material.

(b) *Temporary security area.* A designated interim security area, the need for which will not exceed 30 days from date of establishment. A temporary security area may also be established on an interim basis, pending approval of its establishment as a permanent security area.

(c) *Permanent security area.* A designated security area, the need for which will exceed 30 days from date of establishment.

§ 1203a.102 Establishment, maintenance, and revocation of security areas.

(a) *Establishment.* (1) Directors of NASA field and component installations, and the Director of Headquarters Administration for NASA Headquarters (including component installations) may establish, maintain, and protect such areas as restricted, limited, or closed depending upon the opportunity available to unauthorized persons either to:

(i) Obtain knowledge of classified information,

(ii) Damage or remove property, or to

(iii) Disrupt Government operations.

(2) The concurrence of the Director of Security NASA Headquarters, will be obtained prior to the establishment of a permanent security area.

(3)(i) As a minimum, the following information will be submitted to the Director of Security 15 workdays prior to establishment of each permanent security area:

(*a*) The name and specific location of the NASA field or component installation, facility, or property to be protected.

(*b*) A statement that the property is owned by, or leased to, the United States for use by NASA or is the property of a NASA contractor located on a NASA installation or component installation.

(*c*) Designation desired: i.e., restricted, limited, or closed.

(*d*) Specific purpose(s) for the establishment of a security area.

(ii) For those areas currently designated by the installation as "permanent security areas," the information set forth in paragraph (d)(3)(i) of this section will be furnished to the Security Division, NASA Headquarters, within 30 workdays of the effective date of this part.

(b) *Maintenance.* The security measures which may be utilized to protect such areas will be determined by the requirements of individual situations. As a minimum such security measures will:

(1) Provide for the posting of signs at entrances and at such intervals along the perimeter of the designated area as to provide reasonable notice to persons about to enter thereon. The Director of Security, NASA Headquarters, upon request, may approve the use of signs that are now being used pursuant to a State statute.

(2) Regulate authorized personnel entry and movement within the area.

(3) Deny entry of unauthorized persons or property.

(4) Prevent unauthorized removal of classified information and material or property from a NASA installation or component installation.

(c) *Revocation.* Once the need for an established permanent security area no longer exists, the area will be returned immediately to normal controls and procedures or as soon as practicable. The Director of Security will be informed of permanent security area revocations within 15 workdays.

§ 1203a.103 Access to security areas.

(a) Only those NASA employees, NASA contractor employees, and visitors who have a need for such access and who meet the following criteria may enter a security area:

(1) *Restricted area.* Be authorized to enter the area alone or be escorted by or under the supervision of a NASA employee or NASA contractor employee who is authorized to enter the area.

(2) *Limited area.* Possess a security clearance equal to the level of the classified information or material involved or be the recipient of a satisfactorily completed national agency check if classified material or information is not involved. Personnel who do not meet the requirements for unescorted access may be escorted by a NASA employee or NASA contractor employee who meets the access requirements and has been authorized to enter the area.

(3) *Closed area.* Possess a security clearance equal to the classified information or material involved.

(b) The directors of NASA field and component installations, and the Director of Headquarters Administration for NASA Headquarters (including component installations) may rescind previously granted authorizations to enter a security area when an individual's continued presence therein is no longer required, threatens the security of the property therein, or is disruptive of Government operations.

§ 1203a.104 Violation of security areas.

(a) *Removal of unauthorized persons.* The directors of NASA field and component installations (or their designees) and the Director of Headquarters Administration for NASA Headquarters (including component installations) or his designee may order the removal or eviction of any person whose presence in a designated security area is in violation of the provisions of this part or any regulation or order established pursuant to the provisions of this part.

(b) *Criminal penalties for violation.* Whoever willfully violates, attempts to violate, or conspires to violate any regulation or order establishing requirements or procedures for authorized entry into an area designated restricted, limited, or closed pursuant to the provisions of this part may be subject to prosecution under 18 U.S.C. 799 which provides penalties for a fine of not more than $5,000 or imprisonment for not more than 1 year, or both.

§ 1203a.105 Implementation by field and component installations.

If a Director of a NASA field or component installation finds it necessary to issue supplemental instructions to any provision of this part, the instructions must first be published in the FEDERAL REGISTER. Therefore, the proposed supplemental instructions will be sent to the Security Division (Code DHZ), NASA Headquarters, in accordance with NASA Management Instruction 1410.10 for processing.

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subparts 1-3—[Reserved]

Subpart 4—Small Business Policy

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1204.401 Policy.
1204.402 Responsibility.
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Subpart 5—Delegations and Designations

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1204.502 Delegations of authority to the Corps of Engineers, U.S. Army, concerning NASA land acquisition activities.
1204.503 Determination and delegation of authority concerning the granting of easements.
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1204.506 [Reserved]
1204.507 Delegation of authority to the Corps of Engineers Board of Contract Appeals.
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Subparts 6-9—[Reserved]

Subpart 10—Inspection of Persons and Personal Effects on NASA Property

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1204.1001 Policy.
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Subpart 11—[Reserved]

Subpart 12—Debriefing of Unsuccessful Companies in Competitive Negotiated Procurements

1204.1200 Scope of subpart.
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APPENDIX A—ITEMS TO COVER IN MEMORANDA OF AGREEMENT

Subparts 1-3—[Reserved]

Subpart 4—Small Business Policy

AUTHORITY: Small Business Act of 1953 (15 U.S.C. 637) as amended by Pub. L. 95-507, sec. 221.

SOURCE: 47 FR 18124, Apr. 28, 1982, unless otherwise noted.

§ 1204.400 Scope of subpart.

This subpart establishes the small business policy and program of the National Aeronautics and Space Administration (NASA).

§ 1204.401 Policy.

(a) Consistent with the requirements of the Small Business Act (15 U.S.C. 631-650), as amended, and the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(5)), it is the policy of NASA to place a fair proportion of its total purchases and contracts with small business concerns.

(b) In carrying out the NASA procurement program, the primary consideration shall be that of securing contract performance, including obtaining deliveries of required items or services at the time, in the quantity and of the quality prescribed. In the area of research and development contracts, the general policy of NASA is to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the interest of the civilian space program that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

§ 1204.402 Responsibility.

(a) *Office of Small and Disadvantaged Business Utilization.* The Director, Office of Small and Disadvantaged Business Utilization, NASA Headquarters, is responsible for the development, supervision and coordination of the NASA Small Business Program. The Director is also responsible for formulating policy and procedures relating to small business, and representing NASA before other government agencies on matters primarily affecting small business.

(b) *NASA field installations.* The head of each NASA field installation will designate a qualified individual in the procurement office as a "small business specialist," to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program, or secure assistance in submitting bids or proposals as well as performance of contracts. Where the head of a field installation considers that the volume of procurement at the installation does not warrant a full-time small business specialist, he/she may assign such duties to qualified procurement personnel on a part-time basis. NASA field installations shall establish and maintain liaison with the Small Business Administration representative or the appropriate Small Business Administration Regional Office in matters relating to field procurement activities.

§ 1204.403 General requirements.

(a) All proposed procurement transactions in excess of $2,500 shall be examined by small business specialists prior to issuance of bids or requests for proposals to determine suitability for small business participation or set-aside.

(b) The appropriate office of the Small Business Administration shall be informed of proposed procurements estimated to exceed $10,000.

(c) Bidders' list shall be maintained on a current basis and reviewed to assure that small business firms are given an equitable opportunity to participate in those procurements suitable for performance by such firms.

(d) NASA small business personnel shall acquire descriptive data, brochures, or other information concerning small business firms which appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel. The Small Business Advisor at Headquarters and the small business specialists at NASA field installations shall assist and consult with NASA technical personnel in the analysis of such information, in arranging field inspection of facilities in making appointments for technical personnel with representatives of small business firms, and obtaining from other agencies appraisals of work performed by such firms.

(e) In accordance with Pub. L. 95-507, NASA will require contractors having contracts in excess of $1,000,000 for the construction of any public facility, and in excess of $500,000 for all other contracts, and of such nature as to afford opportunities for subcontracting in substantial amounts, to establish and conduct small business subcontracting programs. Such programs will be periodically reviewed by NASA small business representatives to evaluate their adequacy.

(f) NASA will encourage competent small business concerns to submit unsolicited proposals for research and development work in areas within NASA's responsibility, which may lead to contracts for such work. The formation of contractor pools or joint ventures to perform research and development work will also be encouraged.

(g) NASA small business personnel will disseminate to small business concerns information concerning inventions for which NASA holds patents on behalf of the United States and under which it is NASA policy to grant licenses.

(h) Small business participation in NASA procurement shall be accurately measured, recorded, and publicized.

Subpart 5—Delegations and Designations

AUTHORITY: 42 U.S.C. 2473(b)(1), (3), (5), (6), and (14), unless otherwise noted.

§ 1204.500 Scope of subpart.

This subpart establishes various delegations of authority to, and designations of, National Aeronautics and Space Administration officials and other Government officials acting on behalf of the agency to carry out prescribed functions of the National Aeronautics and Space Administration.

[30 FR 3378, Mar. 13, 1965]

§ 1204.501 Power and authority—to take actions in real estate and related matters.

(a) *Delegation of authority.* The officials listed in paragraph (b) of this section are delegated authority, in accordance with applicable laws and regulations, and subject to conditions imposed by immediate superiors to:

(1) Prescribe agency real estate policies, procedures, and regulations;

(2) Enter into and take other actions including, but not limited to, the following:

(i) Acquire (by purchase, lease, condemnation, or otherwise) fee and lesser interests in real property and, in the case of acquisition by condemnation, to sign declarations of taking.

(ii) Determine entitlement to and quantum of, financial compensation under, and otherwise exercise the authority contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and regulations in implementation thereof.

(iii) Grant easements, leaseholds, licenses, permits or other interests in real property (wherever located) controlled by NASA.

(iv) Approve the use of NASA-controlled real property and acquisition and use of non-Government-owned real property for any NASA-related non-appropriated fund activity purpose.

(v) Sell and otherwise dispose of real property in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.).

(vi) Exercise control over the acquisition, utilization, and disposal of movable/relocatable structures including prefabricated buildings, commercial packaged accommodations, trailers, and other like items used as facility substitutes.

(vii) Request other Government agencies to act as real estate agent for NASA.

(viii) Issue certificates indicating the need for family housing and the employment status of individuals eligible for such housing.

(ix) Authorize other NASA officials to take specific implementing action with regard to any real property transaction included in the scope of authority delegated in this paragraph (a)(2) of this section.

(b) *Officials receiving authority.* (1) NASA Comptroller; and

(2) Director of Facilities.

(c) *Redelegation.* (1) The authority delegated in paragraph (a)(1) of this section may not be redelegated.

(2) The authority delegated in paragraph (a)(2) of this section may be redelegated with power of further redelegation.

(d) *Reporting.* The officials to whom authority is delegated in this § 1204.501 shall ensure that feedback is provided to the Administrator through official channels to keep him fully and currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

[40 FR 48121, Oct. 14, 1975]

§ 1204.502 Delegations of authority to the Corps of Engineers, U.S. Army, concerning NASA land acquisition activities.

(a) The Chief of Engineers, United States Army, or his designee, may, with respect to land acquired by the United States for the use of NASA at the Mississippi Test Facility and at the John F. Kennedy Space Center, NASA (Cocoa Beach, Florida), exercise all the authority of NASA under the Act of Congress approved August 14, 1962 (42 U.S.C. 2473(b)(14)) to reimburse certain moving expenses to the extent determined by him to be fair and reasonable, the owners and tenants of land and interests in land in accordance with the provisions of Subpart 6, but in no event in excess of 25 per centum of the fair value of the parcel of land or interest in land to which the reimbursement is related.

(b) The fair value of land or an interest in land shall be determined on the basis of an appraisal made by or on behalf of the Government in accordance with established appraisal principles and procedures, except that the Chief of Engineers, United States Army, in extraordinary cases where he deems departures from the appraised value to be justified, may submit the question of fair value to the Administrator, NASA for his determination.

[29 FR 4148, Mar. 31, 1964]

§ 1204.503 Determination and delegation of authority concerning the granting of easements.

(a) *Determination.* I hereby determine that an easement will not be adverse to the interests of the United States if and to the extent that the interest in real property conveyed thereunder is not required for a NASA program and the grantee's exercise of right under such easement will not interfere with NASA operations.

(b) *Delegation of authority.* The Deputy Associate Administrator for Programming and the Institutional Directors at NASA Headquarters, as defined in the publication, NASA Basic Administrative Processes (NPC 107), and the Directors of field installations with respect to real property under their supervision and management may, subject to the restrictions in paragraph (c) of this section, exercise all of the authority of the National Aeronautics and Space Administration under the Act of Congress approved October 23, 1962 (40 U.S.C. 319 to 319c), including the authority to authorize or grant on behalf of the United States, to a State or political subdivision or agency thereof or to any person applying therefor, such easements in, over, or upon real property of the United States controlled by NASA as will not be adverse to the interests of the United States.

(c) *Restrictions.* Except as otherwise specifically provided, no such easement shall be authorized or granted under the authority stated in paragraph (b) of this section unless:

(1) The NASA official authorizing or granting such easement determines that the interest in real property to be conveyed thereunder is not required for a NASA program and that the grantee's exercise of rights under such easement will not interfere with NASA operations; and

(2) Monetary or other benefit, including any interest in real property, is received by the Government as consideration for the granting of such easement; and

(3) The instrument granting such easement provides—

(i) For the termination of the easement, in whole or in part, if there has been:

(*a*) A failure to comply with any term or condition of the grant; or

(*b*) A non-use of the easement for a consecutive two-year period for the purpose for which granted; or

(c) An abandonment of the easement; or

(d) A determination by a NASA official authorized to grant easements that the interests of the national space program, the national defense, or the public welfare require the termination of such easement; and a 30-day notice, in writing, to the grantee that such determination has been made; and

(ii) That written notice of such termination shall be given to the grantee, or its successors or assigns, by a NASA official authorized to grant easements or his designee, and that termination shall be effective as of the date of such notice; and

(iii) For any other reservations, exceptions, limitations, benefits, burdens, terms, or conditions which either the authorizing or granting official or both deem necessary to protect the interests of the United States.

(d) *Deviations.* If, in connection with a proposed granting of an easement, the Deputy Associate Administrator for Programming or the cognizant Institutional Director at NASA Headquarters, or a Director of a field installation determines that a deviation from the restrictions in paragraph (c) of this section is appropriate, he may request authority for such deviation from the Administrator, NASA.

(e) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Deputy Associate Administrator for Programming and the Institutional Directors at NASA Headquarters and the Directors of field installations, pursuant to the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at that time) may:

(1) Utilize the services of the Corps of Engineers, U.S. Army, and

(2) Authorize the Corps of Engineers to execute, on behalf of NASA, grants of easements in real property, as provided for in paragraph H6 of the Corps of Engineers-NASA agreement contained in NASA Management Instruction 2-3-26.

[29 FR 17892, Dec. 17, 1964]

§ 1204.504 Determination and delegation of authority concerning the granting of leaseholds, permits and licenses in real property.

(a) *Scope.* This section delegates to the following NASA officials authority to grant such leaseholds, permits and licenses in real property as are determined in this section not to be adverse to the interests of the United States:

(1) Deputy Associate Administrator for Programming, NASA Headquarters;

(2) Institutional Directors (see paragraph (b)(3)); and

(3) Directors of NASA field installations.

(b) *Definitions.* For the purposes of this section the following definitions will apply:

(1) The term "real property" means land, buildings, other structures and improvements, appurtenances and fixtures located thereon.

(2) The term "interest in real property" means a leasehold, permit or license.

(3) The term "Institutional Director" is the title applied to the Associate Administrator for Manned Space Flight, Associate Administrator for Space Science and Applications, Associate Administrator for Advanced Research and Technology and the Deputy Associate Administrator for Industry Affairs in their respective roles as the Headquarters manager of the field installations assigned to them.

(c) *Determination.* I hereby determine that grants of leaseholds, permits or licenses made in accordance with the provisions or this section will not be adverse to the interests of the United States.

(d) *Delegation of authority.* The Deputy Associate Administrator for Programming and the Institutional Directors at NASA Headquarters and the Directors of field installations with respect to real property under their supervision and management may, subject to the restrictions set forth in paragraph (e) of this section, grant interests in real property (as defined in paragraph (b)(3) of this section) to any person or organization, including other Government Agencies, a State or political subdivision or agency thereof: *Provided, however,* That this authority may not be exercised with respect to real property which is excess within the meaning of 40 U.S.C. 472(e).

(e) *Restrictions.* Except as otherwise specifically provided, no such interest in real property shall be granted under the authority stated in paragraph (d) of this section unless:

(1) The Deputy Associate Administrator for Programming or the cognizant Institutional Director at NASA Headquarters or the Director of the field installation concerned determines:

(i) That the interest in real property to be granted is not required for a NASA program, and

(ii) That the grantee's exercise of rights under such interest will not interfere with NASA operations; and

(2) Fair value in money is received by NASA on behalf of the Government as consideration for the grant of such interest; and

(3) The instrument granting such interest provides:

(i) For a term not to exceed five years;

(ii) For the termination thereof, in whole or in part, and without cost to the Government if there has been:

(*a*) A failure to comply with any term or condition of the grant; or

(*b*) A determination by the Deputy Associate Administrator for Programming or the cognizant Institutional Director at NASA Headquarters or the Director of the field installation concerned that the interests of the national space program, the national defense, or the public welfare require the termination of the interest granted; and a 30-day notice, in writing, to the grantee that such determination has been made;

(iii) That written notice of such termination shall be given to the grantee (or its successors or assigns) by the Deputy Associate Administrator for Programming or the cognizant Institutional Director at NASA Headquarters, or the Director of the field installation concerned, and that termination shall be effective as of the date specified by such notice; and

(iv) For any other reservations, exceptions, limitations, benefits, burdens, terms or conditions which the Deputy Associate Administrator for Programming or the cognizant Institutional Director at NASA Headquarters or the Director of the field installation concerned deems necessary to protect the interest of the United States.

(f) *Deviations.* If, in connection with a proposed grant of an interest in real property, the Deputy Associate Administrator for Programming or the cognizant Institutional Director at NASA Headquarters or a Director of a field installation determines that a deviation from the restrictions set forth in paragraph (e) of this section is appropriate, he may submit a request therefor to the Associate Administrator, NASA Headquarters, who is hereby authorized to approve such deviations to the extent authorized by law.

(g) *Services of the Corps of Engineers.* In exercising the authority herein granted, the Deputy Associate Administrator for Programming and the Institutional Directors at NASA Headquarters and the Directors of field installations, pursuant to the applicable provisions of any cooperative agreement between NASA and the Corps of Engineers (in effect at the time) may:

(1) Utilize the services of the Corps of Engineers, U.S. Army, and

(2) Delegate authority to the Corps of Engineers to execute, on behalf of NASA, any grants of interests in real property as authorized in this section, provided that the conditions set forth in paragraphs (e) and (f) of this section are complied with.

[29 FR 8142, June 26, 1964]

§ 1204.505 Delegation of authority to execute certificates of full faith and credit.

(a) *Scope.* This section designates NASA officials authorized to certify NASA documents to be submitted in evidence in Federal Courts.

(b) *Delegation of authority.* The following NASA Headquarters officials are delegated authority to execute certificates of full faith and credit (Office of the Administrator section of NASA Form 955) certifying the signatures and authority of employees of the National Aeronautics and Space Administration, whenever such certification is required to authenticate copies of official records for possible admission in evidence in judicial proceedings pursuant to 28 U.S.C 1733 or any other statute:

(1) General Counsel;
(2) Deputy General Counsel;
(3) [Reserved]
(4) Assistant General Counsels.

[29 FR 6319, May 14, 1964, as amended at 39 FR 25229, July 9, 1974; 43 FR 34122, Aug. 3, 1978]

§ 1204.506 [Reserved]

§ 1204.507 Delegation of authority to the Corps of Engineers Board of Contract Appeals.

(a) *Determination.* The Corps of Engineers Board of Contract Appeals, Office of the Chief of Engineers, United States Army (hereinafter referred to as the Board), is authorized to act for and exercise the full authority of the Administrator of the National Aeronautics and Space Administration in all cases in which by the terms of a Corps of Engineers' lease of NASA real property the lessee may appeal to the Administrator of NASA or his representative from the findings of fact and final decision of the contracting officer or his authorized representative.

(b) *Delegation of authority.* The Board shall have all powers necessary for the proper performance of its duties. This includes but is not limited to authority to conduct hearings, dismiss proceedings, order the production of documents and other evidence, take official notice of facts within general knowledge, and decide all questions of fact and law raised by the appeal. There shall be no administrative appeal from decisions of the Board.

(c) Counsel to represent the interests of the Government in proceedings before the Board shall be designated in accordance with current procedures of the Corps of Engineers as they may be amended from time to time.

[30 FR 3378, Mar. 13, 1965]

§ 1204.508 Delegation of authority of certain civil rights functions to Department of Health, Education, and Welfare.

(a) Pursuant to the authority of § 1250.111(c) of this chapter, the following responsibilities of the National Aeronautics and Space Administration and of the responsible NASA official under Title VI, Civil Rights Act of 1964 (78 Stat. 252) (42 U.S.C. 2000d), with respect to institutions of higher education were delegated by the Administrator, NASA, to the Secretary, Department of Health, Education, and Welfare, on March 15, 1966:

(1) Responsibilities with respect to compliance reports, including receiving and evaluation thereof under § 1250.105(b) of this chapter, and other actions under § 1250.105 of this chapter.

(2) All actions under § 1250.106 of this chapter, including periodic compliance reviews, receiving of complaints, investigations, determination of recipient's apparent failure to comply, and resolution of matters by informal means.

(b) NASA specifically has reserved to itself the responsibilities for effectuation of compliance under §§ 1250.107, 1250.108, and 1250.109 of this chapter.

(c) The responsibilities so delegated were and are to be exercised in accordance with the "Plan for Coordinated Enforcement Procedures for Higher Education" (dated February 1966), developed by interested Government agencies and approved by the Department of Justice; and redelegation by the Secretary to other officials of the Department of Health, Education, and Welfare was authorized.

(d) NASA has retained the right to exercise these responsibilities itself in special cases with the agreement of the appropriate official in the Department of Health, Education, and Welfare. The Office of Grants and Research Contracts, NASA Headquarters, has been designated to represent NASA in carrying out the provisions of this delegation.

[32 FR 3883, Mar. 9, 1967]

Subparts 6-9—[Reserved]

Subpart 10—Inspection of Persons and Personal Effects on NASA Property

AUTHORITY: 42 U.S.C. 2455(a).

SOURCE: 48 FR 37608, Aug. 19, 1983, unless otherwise noted.

§ 1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes certain minimum procedures concerning the inspection of persons and property in their possession on NASA installations.

§ 1204.1001 Policy.

In the interest of national security, NASA will provide appropriate and adequate protection or security for facilities, property, and information in its possession or custody. In furtherance of this policy, NASA reserves the right to conduct an inspection of any person, including any property in the person's possession or control, as a condition of admission to or continued presence on any NASA installation.

§ 1204.1002 Responsibility.

The Director for each Field Installation and the Director, Headquarters Administration Division, for Headquarters, is responsible for implementing the provisions of this subpart when it is determined that such action is necessary because of bomb threats, unexplained loss of Government property, or other unusual situations, for the protection or security of the installation and the personnel and property therein. In the local implementation of this subpart, the Directors of NASA Installations (and component installations) located on Federal property under the control of other agencies will coordinate their action with appropriate officials of the other agencies concerned.

§ 1204.1003 Procedures.

(a) All entrances to NASA installations will be conspicuously posted with the following notice:

PURSUANT TO NASA REGULATIONS THE ENTRANCE OF INDIVIDUALS TO, OR THEIR CONTINUED PRESENCE ON, THIS INSTALLATION IS CONDITIONED UPON THEIR CONSENT TO INSPECTION OF THEIR PERSONS, AND OF PROPERTY IN THEIR POSSESSION OR CONTROL.

(b) Inspection pursuant to this subpart will be conducted only by NASA security personnel or members of the installation security patrol or guard force. Such inspections will be conducted in accordance with guidelines established by the Chief, NASA Security Office, NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be carried out, and the individual will be denied admission to, or be escorted from, the installation.

(d) If, during an inspection, an individual is found to be in unauthorized possession of items believed to represent a threat to the safety or security of the installation, the individual will be denied admission to, or be escorted from, the installation and appropriate law enforcement authorities will be notified immediately.

(e) If, during an inspection conducted pursuant to this subpart, an individual is in possession of U.S. Government property without proper authorization, that person will be required to relinquish the property to the security representative conducting the inspection pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be given a receipt therefor.

Subpart 11—[Reserved]

Subpart 12—Debriefing of Unsuccessful Companies in Competitive Negotiated Procurements

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 47 FR 14893, Apr. 7, 1982, unless otherwise noted.

§ 1204.1200 Scope of subpart.

This subpart sets forth NASA policy and procedures for debriefing unsuccessful offers in competitive negotiated procurements.

§ 1204.1201 Policy.

(a) If requested in writing, it is NASA policy to provide a debriefing to a company that has unsuccessfully competed for a NASA procurement. Such a debriefing informs the unsuccessful offeror of those areas of its proposal judged to be deficient, the reasons why it was not selected, and the basis for selection of the successful contractor. If the successful offeror was selected on the basis of the quality of its proposal to satisfy the mission requirement, the unsuccessful firm should be so advised, including a general comparison of significant areas, but excluding a point-by-point comparison of all elements considered in the evaluation criteria. If the successful offeror was selected on the basis of cost or other factors, the unsuccessful offeror should also be so advised.

(b) If an unsuccessful offeror feels that its exclusion from the award was not justified, it will rely, at least in part, on the information given to the company in the debriefing to determine whether recourse should be sought against that exclusion. Accordingly, it is essential that debriefings be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the company be absolutely factual and consistent with:

(1) The findings of the Source Evaluation Board and the basis on which the Selection Official made the decision; or

(2) The findings of the Contracting Officer and the basis on which the Contracting Officer made the decision if the Source Evaluation Board procedures were not employed.

(c) The debriefing should not reveal:

(1) Confidential business information, trade secrets, techniques or processes of the other companies which competed for the contract;

(2) The relative merits or technical standing of the other successful offerors, or the scoring of the Source Evaluation Board when such a Board was employed.

(d) Unless authorized by the Assistant Administrator for Procurement, the Source Selection Statement for alternative system design concepts under the Major System Acquisitions process is not to be released to competing offerors or the general public until the release of the Source Selection Statements for full-scale development.

(e) The principles expressed in this subpart, except when relevant only to Source Evaluation Board procedures, apply to all NASA competitively negotiated procurements.

§ 1204.1202 Procedures.

(a) Any NASA employee who receives a request for a debriefing from an unsuccessful offeror, either written or oral, shall immediately refer that request to the appropriate official at the cognizant field installation or Headquarters office, as designated in Attachment A, to coordinate debriefing matters.

(b) When the designated official has received a request for a debriefing, such official shall inform other concerned officials at the installation and, in the case of procurement actions where the Administrator was the Selection Official, cognizant NASA Headquarters personnel.

(c) Debriefings are to be conducted by senior NASA officials. When the selection has been made by the Administrator, the Administrator will designate an official familiar with the rationale for the selection to conduct the debriefings, with participation by cognizant field installation personnel. Similarly, when the selection has been made by the Field Installation Director or a Headquarters Staff or Program Office head, the Center Director or Official-in-Charge of the Headquarters office shall designate an official and necessary supporting staff to perform the debriefing. When formal Source Evaluation Board procedures were not applied, the installation Procurement Officer or the Procurement Officer's designee shall perform the debriefing.

(d) When a company has been an unsuccessful offeror in a negotiated NASA procurement and submits, prior to the award of the contract, a written request for a debriefing, such a debriefing will be provided at the earliest feasible time. This normally shall be after announcement of the selection decision and prior to award of the contract. "Selection decision" means the final selection of the one successful contractor, or the contractors where more than one contract is to be awarded. Where the selection decision involves more than one contractor pursuant to the Major System Acquisition process, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs and approaches of the successful contractor(s) that would result in a transfusion of ideas which also could inhibit contractors during the early phase from offering their best and most promising ideas for meeting the mission need. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefings may be conducted after award.

(e) Following any debriefing, a summary of the results thereof will be prepared for the signature of the NASA representative who conducted the debriefing and will be filed in the Source Evaluation Board file or the contract file, as appropriate.

Subpart 13—[Reserved]

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 50 FR 43125, Oct. 24, 1985, unless otherwise noted.

§ 1204.1400 Scope.

This subpart establishes the responsibility and sets forth the conditions and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government.

§ 1204.1401 Definitions.

For the purpose of this Subpart 1204.14, the following definitions apply:

(a) *NASA airfield facility.* Those aeronautical facilities owned and operated by NASA that consist of the following:

(1) *Shuttle Landing Facility.* The aeronautical facility which is a part of the John F. Kennedy Space Center (KSC), Kennedy Space Center, FL, and is located at 80°41′ west longitude and 28°37′ north latitude.

(2) *Wallops Airport.* The aeronautical facility which is part of the Wallops Flight Facility (WFF), Wallops Island, VA, and is located at 75°36′ west longitude and 37°56′ north latitude in the general vicinity of Chincoteague, Virginia.

(b) *Aircraft not operated for the benefit of the Federal Government.* Aircraft which are not owned by the United States Government or aircraft carrying crew members or passengers who do not have official business requiring the use of a NASA airfield facility in the particular circumstance in question.

(c) *Official business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel or organizations at or near a NASA facility. The use of a NASA airfield facility by transient aircraft to petition for U.S. Government business or to obtain clearance, servicing, or other items pertaining to itinerant operations is not considered official business.

(d) *User.* An individual partnership, or corporation owning, operating, or using an aircraft not operated for the benefit of the Federal Government in whose name permission to use a NASA airfield facility is to be requested and granted.

(e) *Hold Harmless Agreement.* An agreement executed by the user by which the user acknowledges awareness of the conditions of the permission to use a NASA airfield facility, assumes any risks connected therewith, and releases the U.S. Government from all liability incurred by the use of such facility.

(f) *Use permit.* The written permission signed by the authorized approving official to land, take off, and otherwise use a NASA airfield facility. Such use permit may be issued for single or multiple occasions. The specific terms of the use permit and the provisions of this Subpart govern the use which may be made of the airport by aircraft not operated for the benefit of the Federal Government.

(g) *Certificate of insurance.* A certificate signed by an authorized insurance company representative (or a facsimile of an insurance policy) evidencing that insurance is then in force with respect to any aircraft not operated for the benefit of the Federal Government, the user of which is requesting permission to use a NASA airfield facility (see § 1204.1404(b)).

§ 1204.1402 Policy.

(a) NASA is not engaged in a public or quasi-public enterprise; and, hence, any use of airfield facilities by aircraft not operated for the benefit of the Federal Government shall be within the sole discretion of the approving authorities.

(b) Except in the event of a declared in-flight emergency (see § 1204.1406) or as otherwise determined by an approving authority, aircraft not operated for the benefit of the Federal Government are not permitted to land or otherwise use NASA airfield facilities.

(c) Any use of a NASA airfield facility by aircraft not operated for the benefit of the Federal Government shall be gratuitous and no consideration (monetary or otherwise) shall be exacted or received by NASA for such use. However, each user, as a condition of receiving permission to use such airfield facility, shall agree to become familiar with the physical condition of the airfield; abide by the conditions placed upon such use; subject the aircraft, the user, and those accompanying the user to any requirements imposed by NASA in the interest of security and safety while the aircraft or persons are on a NASA facility; use the facilities entirely at the user's own risk; hold the Federal Government harmless with respect to any and all liabilities which may arise as a result of the use of the facilities; and carry insurance in an amount which is deemed adequate by NASA.

(d) Permission to use a NASA airfield facility will be granted only in accordance with the limitations and procedures established by an approving authority and then only when such use will not compete with another airport in the vicinity which imposes landing fees or other user charges.

(e) In no event, except for an in-flight emergency (see § 1204.1406), will permission to use NASA airfield facilities be granted to an aircraft arriving directly from, or destined for, any location outside the continental United States.

(f) Permission to use NASA airfields may be granted only to those users having the legal capacity to contract and whose aircraft are in full compliance with applicable Federal Aviation Administration or other cognizant regulatory agency requirements.

(g) Permission to use NASA airfields, except in connection with a declared in-flight emergency, will consist of the right to land, park an aircraft, and subsequently take off. NASA is not equipped to provide any other services such as maintenance or fuel and such services will not be provided except following an in-flight emergency.

§ 1204.1403 Available airport facilities.

The facilities available vary at each NASA installation having an airfield. The airport facilities available are:

(a) *Shuttle Landing Facility*—(1) *Runways.* Runway 15-33 is 15,000 feet long and 300 feet wide with 1,000-foot overruns. The runway is grooved for improved braking under wet conditions.

(2) *Parking area and hangar space.* No hangar space is available. Very limited concrete parking ramp space may be made available for short periods.

(3) *Control tower.* A temporary control tower is operational at selected times and provides VHF and UHF communications on 126.3 MHz and 284.0 MHz. Times when the tower is operational will be publicized through the Federal Aviation Administration's (FAA) Notice to Airmen (NOTAM) system. At other times an advisory service is operational during normal duty hours. FAA regulations pertaining to the operation of aircraft at airports with an operating control tower (§ 91.87 of this title) will apply. When the tower is not in operation, the FAA regulations pertaining to the operation of aircraft at airports without an

operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* There are no approved navigation aids. A Microwave Scanning Beam Landing System (MSBLS) and a Tactical Airborne Navigation System (TACAN) are installed at the Facility. Runway approach lighting (similar to Cat II ALSF-2) and edge lights are available by prior arrangement.

(5) *Hazards.* There are towers and buildings south and southeast of the facility that could pose hazards to air navigation. All are marked with obstruction lights.

(6) *Emergency equipment.* Crash, fire, and rescue (CFR) support will be provided for all multiengine aircraft and for all aircraft weighing over 12,500 pounds during departures and landings.

(b) *Wallops Airport*—(1) *Runways.* There are three hard surfaced runways in satisfactory condition. The runways and taxiways are concrete and/or asphalt. Runway 10-28 is 8,000 feet long, 200 feet wide with maximum wheel load of 57,500 pounds; runway 04-22 is 8,750 feet long, 150 feet wide with maximum wheel load of 57,500 pounds; and runway 17-35 is 4,820 feet long, 150 feet wide with maximum wheel load of 14,700 pounds.

(2) *Parking areas and hangar space.* No hangar space is available. However, limited concrete parking ramp space is available as directed by the control tower.

(3) *Control tower.* This control tower is normally in operation from 0800/1600 local time, Monday through Friday only, legal holidays excluded. The tower may be contracted on 126.5 MHz or 394.3 MHz. When the tower is in operation, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation the FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* Runway and taxiway lights on runway and taxiway 04-22 and 10-28 only. Specific request must be made of the control tower or Salisbury Flight Service Station to have these lights turned on. Lighted red obstruction lights on all airfield obstructions.

(5) *Physical hazards.* Numerous towers in airport vicinity up to 241 feet above ground level.

(6) *Emergency equipment.* Crash, fire, and rescue equipment is normally available on a continuous basis.

(c) *Other facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(d) *Status of facilities.* Change to the status of the KSC and WFF facilities will be published in appropriate current aeronautical publications.

§ 1204.1404 Requests for use of NASA airfield facilities.

(a) Request for use of a NASA airfield, whether on a one time or recurring basis must be in writing and addressed to the appropriate NASA facility, namely:

(1) *Shuttle Landing Facility*—Director of Center Support Operations, Kennedy Space Center, FL 32899.

(2) *Wallops Airport*—Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, Wallops Island, VA 23337.

(b) Such requests will:

(1) Identify the prospective user and aircraft fully, including number of passengers and cargo on board.

(2) State the purpose of the proposed use and the reason why the use of the NASA airfield is proposed rather than a commercial airport.

(3) Indicate the number and approximate date(s) and time(s) of such proposed use.

(4) State that the prospective user is familiar with the provisions of this Subpart 1204.14 and is prepared to fully comply with its terms and the use permit which may be issued.

(c) Upon receipt of the written request for permission to use the airport, the NASA official designated by each facility will request additional information, if necessary, and forward the required Hold Harmless Agreement for execution by the requestor or forward, where appropriate, a denial of the request.

(d) The signed original of the Hold Harmless Agreement shall be returned to the designated NASA official, and a copy retained in the aircraft at all times. Such copy shall be exhibited upon proper demand by any NASA official.

(e) At the same time that the prospective user returns the executed original of the Hold Harmless Agreement, the user shall forward to the designated NASA official the required Certificate of Insurance and waiver of rights to subrogation. Such certificate shall evidence that during any period for which a permit to use is being requested, the prospective user has in force a policy of insurance covering liability to others in amounts not less than those listed in the Hold Harmless Agreement.

(f) When the documents (in form and substance) required by paragraphs (b) through (e) of this section have been received, they will be forwarded with a proposed use permit to the approving authority for action.

(g) The designated NASA official will forward the executed use permit or notification of denial thereof to the prospective user after the approving authority has acted.

§ 1204.1405 Approving authority.

The authority to establish limitations and procedures for use of a NASA airfield as well as the authority to approve or disapprove the use of the NASA airfield facilities subject to the terms and conditions of this Subpart 1204.14 and any supplemental rules or procedures established for the facility is vested in:

(a) *Shuttle Landing Facility.* Director of Center Support Operations, Kennedy Space Center, NASA.

(b) *Wallops Airport.* Director of Suborbital Projects and Operations, Goddard Space Flight Center, Wallops Flight Facility, NASA.

§ 1204.1406 Procedures in the event of a declared in-flight emergency.

(a) Any aircraft involved in a declared in-flight emergency that endangers the safety of its passengers and aircraft may land at a NASA airfield. In such situations, the requirements of this Subpart 1204.14 for advance authorizations, do not apply.

(b) NASA personnel may use any method or means to clear the aircraft or wreckage from the runway after a landing following an in-flight emergency. Care will be taken to preclude unnecessary damage in so doing. However, the runway will be cleared as soon as possible for appropriate use.

(c) The emergency user will be billed for all costs to the Government that result from the emergency landing. No landing fee will be charged, but the charges will include the labor, materials, parts, use of equipment, and tools required for any service rendered under these circumstances.

(d) In addition to any report required by the Federal Aviation Administration, a complete report covering the landing and the emergency will be filed with the airfield manager by the pilot or, if the pilot is not available, any other crew member or passenger.

(e) Before an aircraft which has made an emergency landing is permitted to take off (if the aircraft can and is to be flown out) the owner or operator thereof shall make arrangements acceptable to the approving authority to pay any charges assessed for services rendered and execute a Hold Harmless Agreement. The owner or operator may also be required to furnish a certificate of insurance, as provided in § 1204.1404, covering such take off.

§ 1204.1407 Procedure in the event of an unauthorized use.

Any aircraft not operated for the benefit of the Federal Government which lands at a NASA airfield facility without obtaining prior permission from the approving authority, except in a bona fide emergency, is in violation of this Subpart 1204.14. Such aircraft will experience delays while authorization for departure is obtained pursuant to this Subpart 1204.14 and may, contrary to the other provisions of this Subpart 1204.14, be required, in the discretion of the approving authority, to pay a user fee of not less than $100. Before the aircraft is permitted to depart, the approving authority will require full compliance with this Subpart 1204.14, including the filing of a complete report explaining the reasons for the unauthorized landing. When it appears that the violation of this Subpart 1204.14 was deliberate or is a repeated violation, the matter will be referred to the Aircraft Management Office, NASA Headquarters, which will then grant any departure authorization.

Subpart 15—Intergovernmental Review of National Aeronautics and Space Administration Programs and Activities

AUTHORITY: E.O. 12372, July 14, 1982, 47 FR 30959, as amended April 8, 1983, 48 FR 15887; sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29340, June 24, 1983, unless otherwise noted.

§ 1204.1501 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct Federal development.

(c) These regulations are intended to aid the internal management of the Agency, and are not intended to create any right or benefit enforceable at law by a party against the agency or its officers.

§ 1204.1502 Definitions.

"*Agency*" means the U.S. National Aeronautics and Space Administration.

"*Order*" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"*Administrator*" means the Administrator of the U.S. National Aeronautics and Space Administration or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"*State*" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 1204.1503 Programs and activities subject to these regulations.

The Administrator publishes in the FEDERAL REGISTER a description of the Agency's programs and activities that are subject to these regulations.

§ 1204.1504 [Reserved]

§ 1204.1505 Federal interagency coordination.

The Administrator to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Agency regarding programs and activities covered under these regulations.

§ 1204.1506 Procedures for selecting programs and activities under these regulations.

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 1204.1503 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of the Agency's programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit to the Administrator an assurance that the state has consulted with local elected officials regarding the change. The Agency may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 1204.1507 Communicating with State and local officials concerning the Agency's programs and activities.

(a) For those programs and activities covered by a state process under § 1204.1506 the Administrator, to the extent permitted by law:

(1) Uses the official state process to determine views of state and local elected officials; and;

(2) Communicates with state and local elected officials, through the official state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice to directly affected state, areawide, regional, and local entities in a state of proposed direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The development involves a program or activity not selected for the state process.

This notice may be made by publication in a periodical of general circulation in the area likely to be affected or other appropriate means, which the Agency in its discretion deems appropriate.

§ 1204.1508 Time limitations for receiving comments on proposed direct Federal development.

(a) Except in unusual circumstances, the Administrator gives state processes or state, areawide, regional and local officials and entities at least 60 days from the date established by the Administrator to comment on proposed direct Federal development.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Agency has been delegated.

§ 1204.1509 Receiving and responding to comments.

(a) The Administrator follows the procedures in § 1204.1510 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 1204.1506.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officals and entities may submit comments to the Agency.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the Agency. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Agency by the single point of contact, the Administrator follows the procedures of § 1204.1510 of this part.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 1204.1510 of this part, when such comments are provided by a single point of contact, or directly to the Agency by a commenting party.

§ 1204.1510 Efforts to accommodate intergovernmental concerns.

(a) If a state provides a state process recommendation to the Agency through its single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) Reaches a mutally agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of its decision, in such form as the Administrator in his or her discretion deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) The Agency will not implement its decision for a least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 1204.1511 Coordination in interstate situations.

(a) The Administrator is responsible for—

(1) Identifying proposed direct Federal development that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Agency's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Agency's program or activity;

(4) Responding pursuant to § 1204.1510 of this part if the Administrator receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Agency have been delegated.

(b) The Administrator uses the procedures in § 1204.1510 if a state process provides a state process recommendation to the Agency through a single point of contact.

§ 1204.1512 [Reserved]

§ 1204.1513 Waivers of provisions of these regulations.

In an emergency, the Administrator may waive any provision of these regulations.

APPENDIX A—ITEMS TO COVER IN MEMORANDA OF AGREEMENT

The items to be covered in Memoranda of Agreement between NASA Installations and state and areawide OMB Circular A-95 clearinghouses for coordinating NASA and civilian planning:

1. Clearinghouses will be contacted at the earliest practicable point in project planning. Generally, this will be during the preparation of Preliminary Engineering Reports, or possibly earlier if meaningful information is available that could practically serve as an input in the decision-making process. It should be noted that clearinghouses are generally comprehensive planning agencies. As such, they are often the best repositories of information required for development planning and constitute a resource that can often save Federal planners substantial time and effort, if consulted early enough. In addition to providing information necessary for preliminary engineering, clearinghouses can make useful inputs to the development of environmental impact statements, as well as in reviewing draft statements. Thus, consultation at the earliest stage in planning can have substantial payoffs in installation development.

2. Clearinghouses will be afforded a minimum time of 30 days in which to review and comment on a proposed project and a maximum time of 45 days in which to complete such review.

3. The minimum information to be provided to the clearinghouse will consist of project description, scope and purpose, summary technical data, maps and diagrams where relevant, and any data which would show the relationship of the proposed project or action to applicable land use plans, policies, and controls for the affected area.

4. Establish procedures for notifying clearinghouses of the actions taken on projects, such as implementation, timing, postponement, abandonment, and explaining, where appropriate, actions taken contrary to clearinghouse recommendations.

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PART 1205—SPACE SCIENCE FLIGHT INVESTIGATIONS

Subpart 1205.1—Policy Concerning Data Obtained From Space Science Flight Investigations

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APPENDIX B—FUNCTIONS AND OPERATION OF NATIONAL SPACE SCIENCE DATA CENTER

AUTHORITY: 42 U.S.C. 2454.

SOURCE: 43 FR 18646, May 2, 1978, unless otherwise noted.

Subpart 1205.1—Policy Concerning Data Obtained From Space Science Flight Investigations

§ 1205.100 Scope.

(a) This subpart continues the policy and responsibilities for reduction, analysis, reposition, preservation, and dissemination of data obtained from space science flight investigations. For glossary of terms and abbreviations, see Appendix A to this subpart.

(b) These provisions apply to all data obtained from space flight experiments processed by the Space Science Steering Committee and approved by the Associate Administrator for Space Science. The policy and procedures for the conduct of the Space Science Program and the responsibilities for the selection and support of scientific investigations and Investigators are set forth in NASA Management Instruction 7100.11 and NASA Handbook 8030.6.

§ 1205.101 Policy.

(a) In conducting space science flight experiments, NASA shall seek to:

(1) Preserve the integrity of each investigation.

(2) Encourage the participation of the best qualified scientists.

(3) Make the results of investigations generally available to the scientific community at the earliest practicable time.

(4) Document the instrument performance and probable cause of malfunctions that occur.

(b) NASA shall rely on individual scientists as Principal Investigators (PIs) to carry out a complete investigation by:

(1) Selecting, when appropriate, associates known as Co-Investigators (COIs) who have supporting roles in the investigation.

(2) Conceiving specific investigations.

(3) Developing, when appropriate, the instrumentation for the investigation.

(4) Participating actively, wherever appropriate, in the actual conduct of the investigation.

(5) Reducing and analyzing the data obtained.

(6) Publishing their findings as soon as practicable.

(7) Making their Reduced Data Records (RDRs) and Analyzed Data Records (ADRs) along with supporting documentation available on a timely basis for use by the scientific community and the news media, in accordance with a Project Data Management Plan (PDMP).

(8) Documenting any significant malfunctions which occur during the lifetime of the experiment.

(c) For certain missions, NASA shall also rely on Guest Investigators to obtain data within the capability of a given mission, which are additional to the mission's primary objectives, and to perform an analysis of the acquired data. Such projects generally maintain a data retrieval and dissemination system or provide a data analysis system for the life of the project. In such cases the PDMP should address the exchange of information with the National Space Science Data Center (NSSDC) so it can act as a switching center by referring data requesters to the appropriate contact or making requests on their behalf and handling the distribution. In addition, the eventual transfer of appropriate data to a more permanent repository prior to termination of the project shall be addressed in the PDMP.

(d) For facility-class payload missions, NASA may rely on Guest Investigators to obtain and analyze data. In connection with such missions a complete analysis activity may be provided for the Investigators; this activity may involve the creation of an institute with a significant lifetime. In such cases the PDMP should address the exchange of information with the NSSDC so it can act as a switching center by referring data requesters to the appropriate contact or making requests on their behalf and handling the distribution. In addition, the eventual transfer of appropriate data to a more permanent repository prior to termination of the mission activity or institute shall be addressed in the PDMP.

(e) A provision for the release of data obtained by the individual Investigator from the investigation shall be included in an agreement with the Investigator at the time of selection to participate. NASA shall take such action as necessary to insure that data are released as required to meet scientific, technological, and public information needs.

(f) Foreign scientists participating in cooperative space science flight investigations shall be governed by appropriate international agreements and/or memoranda of understanding.

§ 1205.102 Responsibility

(a) *OSS.* The Associate Administrator for Space Science is responsible for the issuance of implementing management instructions and guidelines consistent with the provisions of this subpart. The Assistant Associate Administrator for Space Science (Science) is responsible for the program management of the NSSDC and for insuring that any noncompliance with PDMPs will be factored into future selection considerations.

(b) *OSS Program Scientist.* (1) Each Program Scientist is responsible for establishing the data analysis policies for each mission including data sharing and collaborations on data analysis. He/she will review the PDMP to assure that data interpretation meetings will be conducted, that wide dissemination of data through presentations and publications will occur and that data and supporting information will be made available to the scientific community in accordance with the PDMP and, along with the Project Scientist, he/she will monitor the execution of the PDMP. He/she will assist NASA public affairs personnel in meeting public information needs.

(2) Each Program Scientist will insure that the letter of notification of selection stipulates that the Principal Investigator (PI), Team Leader (TL), or Guest Investigator (GI) contributes to a PDMP prior to receipt of flight data which documents the plans for data analysis, dissemination of results and for making ADRs, RDRs and supporting documentation available to the scientific community through the designated data dissemination facility. The notification letter will further stipulate that selection for further opportunities will be jeopardized by failure to meet the commitments of the PDMP. The Program Scientist is also responsible for sending information for the Space Investigations Documentation System (SIDS) to the NSSDC after letters of notification have been sent.

(c) *Office of Management Operations.* The Head, Scientific and Technical Information Branch is responsible for the issuance of instructions to the Scientific and Technical Information Facility (STIF) to provide to the NSSDC a monthly listing of newly acquired articles and documents that contain information about of results from NASA-supported space science flight experiments, especially those which can be identified through the contract, grant, or NSAS Unique Project Numbers (UPN) supplied by the NSSDC.

(d) *Field installations.* NASA field installations assigned project management responsibility for space science flight projects are responsible for:

(1) Insuring that the project plan includes a statement within the project results (or equivalent) section that the Project Scientist or Mission Scientist, the appropriate scientific personnel associated with the investigations that comprise the mission, and the NSSDC acquisition manager will develop a PDMP. This PDMP will be approved by the project manager with concurrence signatures by the Project Scientist and the Director of the NSSDC.

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(2) Insuring that the contracts or written agreements negotiated between the PIs, TLs, or GIs institution and the project management center specify the responsibility of the PI, TL, or GI for data reduction, data analysis, publication of results, and, where appropriate, the preparation of selected ADRs, RDRs and necessary documentation for delivery to a data disseminating repository. The contracts or written agreements will stipulate that the contract number or, in the case of a NASA field center Investigator, that the UPN number appear in all reports or articles. Copies of all reports and preprints shall be sent to the STIF and to the NSSDC. This responsibility will be documented in a PDMP to which the Investigators, the Project Scientists, the NSSDC Acquisition Manager, and the appropriate scientific advisory groups will contribute. The PDMP will commit the Investigator, where appropriate, to supply to a specified repository the following documentation upon submission of the selected ADRs and RDRs:

(i) General information about each data set, such as:

(A) Form of data set—hard copy, magnetic tape, microfiche, microfilm, photographic film, etc.

(B) Quantity of data set—number of units of the form.

(C) External identification for each physical unit of the data set—spacecraft, experiment, Investigator's internal ID.

(D) Time period covered by the data set.

(E) Quantity by which data set is ordered—time, orbit number, spatial coordinate, etc.

(F) Supporting documentation—tape formats, catalog, directory, indexes, User's Guide, etc.

(G) Brief description of the data set (not to exceed 250 words).

(ii) Specific information about each data set, such as:

(A) Magnetic tape—track density, recording density, recording mode, recording parity, make and model number of computer used, number of files, size of physical records, logical record format with specification of each field, etc.

(B) Photographic or microform—type of film, frame and/or reel numbers where supporting data and description are located, index of frames and each reel, assurance that all reels are quality controlled to allow proper duplication, etc.

(C) Hard copy—assurance that copy is clean, legible and of proper contrast so it can be photographed; index or catalog if appropriate; form of binding (burst, unburst, loose leaf, bound); etc.

(iii) A Data Users' Guide which includes a summary of the investigation, a description of the instrument, a discussion of calibration procedures and results, a discussion of pertinent events in the operational history that might affect data interpretation, a discussion of over-all data reduction procedures used in generating the various data sets, and other information useful to a scientifically trained recipient of the data.

(iv) A list of all published articles related to the investigation by the investigator group or team and copies of all reports and preprints.

(3) Insuring that Investigators on these projects fulfill the stipulations of the contracts or written agreements pertaining to the responsibilities described in paragraph (d)(1) of this section.

(4) Delivery of EDRs to Investigators on a timely basis. Conditions for discarding or destroying EDRs shall be specified in the PDMP.

(5) Providing to the NSSDC during the writing of the project plan (and provided updates during revisions and specifically after launch) the following information:

(i) Brief statement of the mission objectives for each launch (not to exceed 200 words).

(ii) The names, addresses and telephone and telex numbers of the program manager, Program Scientist, project manager, and Project Scientists for each mission.

(iii) The launch site, launch vehicle, spacecraft weight, and planned orbit parameters.

(iv) A brief description of the spacecraft, not exceeding 250 words.

(v) For each investigation the names, addresses and telephone and telex number of all the Investigators and the relevant contract or UPN numbers.

(vi) The name of each experiment, its weight, average power, and approximate bit rate.

(vii) A brief description of each experiment, not exceeding 250 words.

(e) *The PI, TL, or GI (NASA, Non-NASA, and foreign).* At the time an investigation is selected, the PI, TL, or GI will be notified by letter signed by the Associate Administrator for Space Science of his responsibilities for data reduction, prime analysis, and the archiving of appropriate ADRs and RDRs. These responsibilities (subject in the case of foreign scientists to the specifications of the governing international agreement) will include:

(1) Completion of data reduction and prime analysis of the data from his experiment within the period of time agreed upon between the PI, TL, or GI and the Associate Administrator for Space Science.

(2) Publication of the results of his analyses as soon as practicable.

(3) Preparation of selected ADRs and RDRs together with the necessary background information to make them usable by other scientists as specified in the PDMP.

(f) *National Space Science Data Center (NSSDC).* The Director, Goddard Space Flight Center (GSFC), is responsible for management of the NSSDC, the central data disseminating repository for data obtained from space science flight investigations. For functions and operation of the NSSDC, see Appendix B. The NSSDC Director, appointed by the Director, GSFC, is responsible for:

(1) Implementing the NASA project plan for the operation of the NSSDC.

(2) Recommending through the Director, GSFC, any changes in policies, procedures, and plans for the operation of the NSSDC deemed appropriate to the effective attainment of project objectives.

(3) Preparing budget estimates for operation of the NSSDC.

(4) Recommending fees for the computer and reproduction services performed by the Center to Director, Financial Management Divisions, NASA Headquarters, and obtaining from that office a fee schedule which is consistent with NASA practice.

(5) Based upon information contained in the PDMPs, compiling schedules for transmission of ADRs and RDRs to the NSSDC by investigators on NASA space science flight projects.

(6) Assigning an NSSDC acquisition manager to each flight project to participate in the development of the PDMP and to assure that the plan is carried out on an established schedule concerning the deposition of any data and documentation in the NSSDC.

(7) Providing to the STIF a monthly listing of contract, grant, or UPN numbers for all NASA funded space science flight experiments and related investigations.

(8) Preparing guidelines for the submission to the NSSDC of ADRs and RDRs with documentation from non-NASA missions, and disseminating these guidelines to appropriate individuals and agencies to serve in lieu of a formal PDMP.

(9) Reporting through the Director, GSFC, to the Assistant Associate Administrator for Space Science (Science) semiannually on the data acquisition, request activities and financial status of the NSSDC operations.

(10) Assessing adequacy of the NSSDC facilities and the effectiveness of their utilization; and recommending through the Director, GSFC, the necessary actions to meet future facility requirements.

(11) Maintaining, protecting, and retiring NASA records in the custody of the NSSDC in accordance with the policies and practices of the NASA Records Management Program, NASA Records Disposition Handbook (NASA Handbook 1441.1A) and other pertinent management instructions.

§ 1205.103 Support of research.

The NSSDC will support investigations in space sciences by making available its scientific data and facilities. However, the NSSDC will not provide financial support for such research. The Office of Space Science will entertain proposals for space science research based on data available in the NSSDC.

APPENDIX A—GLOSSARY OF TERMS AND ABBREVIATIONS

Analyzed Data Records (ADRs). Those records which the Investigator designates as the best to display the scientific results of an experiment and provide the physical quantities by applying calibration curves or algorithms to the corrected observed quantities of the Reduced Data Records. The data may be time averaged and may incorporate model-dependent assumptions to obtain the physical quantities. Charts, graphs, tables, correlation coefficients, model parameters, photographs, and plots are possible forms of these records.

Co-Investigator (Co-I). An associate of the Principal Investigator (PI) who is assigned a supporting role in the investigation. In addition, some data rights may be assigned to the Co-I by the PI.

Experiment. A term used interchangeably with investigation (the latter is preferred). Activity or effort aimed at the generation of data obtained by measurement of space phenomena or the use of space to observe earth phenomena and the resulting analysis of such data.

Experiment Data Records (EDRs). Those records provided to the Principal Investigator, Team Leader, Guest Investigator, Co-Investigator, or team member containing all the data from the mission required to carry out the investigation specified in the contract or launch agreement. These records may include orbital position, spacecraft attitude, instrument attitude, commands, housekeeping data, ground time, spacecraft time, data from other investigations and other information as agreed upon. The exact form of these records and manner in which these data are provided may vary depending upon the policies, procedures, and capabilities of the project, the payload or mission control centers, the data acquisition network, and any support processing facilities. These records shall be specified in the Project Data Management Plan.

Facility-Class Payload Mission. A mission in which the payload is an instrument or set of instruments which serve as a facility for a large group of Guest Investigators who may be selected at different times throughout the life of the mission to participate. This type of mission may not have Principal Investigators or Team Leaders and all the data collected from such a mission is generally maintained by the project for use by Guest Investigators. Availability of data for the scientific community at large shall be specified at the Project Data Management Plan.

Guest Investigator (GI). Investigator selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives, or for a facility-class payload mission.

Investigation. Activity or effort aimed at the generation of data obtained by measurement of space phenomena or the use of space to observe earth phenomena and the resulting analysis of such data.

Investigator. A participant in an investigation. This term may refer to a Principal Investigator, Co-Investigator, Team Leader, team member, Guest Investigator, or any other member of an investigation group.

Mission. One or more flights within an approved payload project.

Mission Scientist. A scientist from a NASA field center assigned to a Spacelab mission, the Mission Scientist has similar functions as the Project Scientist with the exception of direct responsibility for the development of any experiments.

National Space Science Data Center (NSSDC). The main central repository for selected data and documentation from space science flight missions that serves as a disseminator of this archived data and supporting information to users throughout the international scientific community. The NSSDC, located at Goddard Space Flight Center, serves as a switching center for requesters who desire data still held individually by Principal Investigators (PIs) or Team Leaders (TLs) by providing a description of the spacecraft and experiment and the name, address and telephone number of the PI or TL. For missions involving a Guest Investigator program in association with a PI or TL experiment or involving a facility-class payload the role of the NSSDC shall be specified in the Project Data Management Plan.

Principal Investigator (PI). A person who conceives an investigation and is responsible for carrying it out, reporting its results, and providing appropriately selected data and supporting documentation to the scientific community in accordance with the Project Data Management Plan. The PI chooses his Co-Investigators and assigns them roles and privileges. The PI is the primary point of contact with the project office regarding the investigation.

Program Scientist. A NASA Headquarters official assigned to each mission who has a number of roles and responsibilities defined in NASA Management Instruction 7100.11, Attachment D. The most relevant one for this subpart is the responsibility to establish the data analysis, data dissemination, and data archiving policies for the mission, which will be documented in the Project Data Management Plan.

Project Data Management Plan (PDMP). A plan that addresses the total activity associated with the data acquired by a mission from the delivery of the Experiment Data Records to the Investigators to the delivery of selected reduced and analyzed records along with supporting documentation to a specified repository. The plan should provide the milestones in the data reduction, data interpretation, and resource requirements for these phases. Any planned data interpretation meetings, workshops, or other activities should be identified. The type of data records, data products, and compilations that have been selected in concert by the Investigators, the Project Scientist, the Program Scientist, the NSSDC acquisition manager, and any appropriate scientific advisory personnel for general availability to the international scientific community and for delivery to a disseminating repository, such as the NSSDC, shall be specified. For missions where the data will be maintained for many years by the project, the Principal Investigator handling a Guest Investigator program, or by an institute established by the mission, the eventual transfer of appropriate data to a more permanent archive, such as NSSDC or other repository, shall be specified. Conditions for discarding or destroying the Experiment Data Records shall be specified.

Project Scientist. A scientist from a NASA field center assigned to a project to manage the scientific aspects. The roles and responsibilities of this function are given in NASA Management Instruction 7100.11, Attachment E.

Reduced Data Records (RDRs). Those records prepared from the Experiment Data Records by applying corrections, where applicable, for temperature, voltage, gain change, offsets, dead time, drift and other known instrument changes, as well as eliminating unusable noisy periods and periods of questionable instrument performance. The Reduced Data Record should contain all the basic and supporting measurements obtained from the experiment, such as time position, attitude, settings of instrument by command, housekeeping data, and other information needed to analyze the data in an independent fashion. Visual data, such as photographs derived from imaging processing techniques, may also be considered as RDRs.

Scientific and Technical Information Facility (STIF). NASA's document and report acquisition and abstracting facility that produces a biweekly abstract journal, STAR, covering the aerospace report literature and a biweekly abstract journal, IAA, covering the published literature in these fields. The facility also produces microfiche copies of the report literature for primary distribution.

Space Science Flight Investigations. Investigations of natural phenomena of the earth and its environment, the moon, other planets, the sun, interplanetary space, and other celestial objects and regions made from aircraft, balloons, sounding rockets, satellites, probes, and manned spacecraft for the purpose of increasing basic knowledge of these natural phenomena. Biological investigations involving the search for extraterrestrial life are included.

APPENDIX B—FUNCTIONS AND OPERATION OF NATIONAL SPACE SCIENCE DATA CENTER

The National Space Science Data Center (NSSDC) has been established at the Goddard Space Flight Center to provide scientific data and facilities in support of investigations in space science.

(a) *Data to be acquired.* The NSSDC will acquire or accept:

(1) RDRs and ADRs from NASA-sponsored space science flight experiments which are deemed appropriate for secondary distribution and archiving by PDMPs or directly by the Program Scientist. The vast majority of records will be from satellite borne instruments. Any departures from a PDMP shall be approved in writing by the Program Scientist, the Project Manager, and the NSSDC Director.

(2) Unclassifed ADRs and RDRs made available from space science flight experiments by other agencies in accordance with interagency agreements providing the data media meet standards for reproduction and the supporting documentation is adequate.

(3) Ground-based correlative data, only when it is considered absolutely necessary for the utilization of data in the NSSDC.

(4) ARDs and RDRs from foreign space science flight experiments made availble by international exchange of data through the World Data Centers or by cooperative agreements.

(b) *Data not to be acquired.* (1) Data obtained from operational observations made for specific applications such as weather forecasting, navigation, communication, tracking and telemetry, medical investigations, and technological investigations which contribute only to the development of space flight hardware will not be acquired by the NSSDC.

(2) Any data from space science flight experiments that is excluded from archiving in the NSSDC by a PDMP.

(3) EDRs (including magnetic tapes, telemetry records, exposed film and meteorite collection panels) will not be acquired by the Center.

(c) *Availability of data.* Data records in the NSSDC will be available to users on the following basis:

(1) To U.S. residents and organizations upon request.

(2) To foreign nationals in accordance with procedures of World Data Center A.

(3) To foreign nationals on the basis of cooperative agreements between NASA and the space agencies of foreign governments or multi-lateral organizations devoted to space research.

(4) To foreign governments on the basis of bilateral intergovernment agreements made by the U.S. on behalf of NASA.

(d) *Preservation of data.* This should be specifically addressed in the PDMP. In general, data in the NSSDC will be preserved for the longest practicable time consistent with the physical life of the record. Records will be reproduced to extend their storage life only if the record of their past utilization justifies such prolongation. Specific categories of data may be reproduced to extend their storage life regardless of past usage in accordance with international or interagency agreements or with the PDMP.

(e) *Interface with other sources of data from NASA missions.* Certain NASA missions such as those involving national facility payloads or those with Guest Investigator programs may maintain the data within the project for many years. The NSSDC will route requesters of such data to the appropriate facility or make request on their behalf depending on the agreement specified in the PDMP. The distribution of catalogs produced by such a mission shall also be determined by the PDMP.

(f) *NSSDC publications.* The NSSDC will issue or provide publications as necessary to facilitate the use of available data. Publications will include:

(1) *Data users guides.* Provides the data user the experiment information and describes the reduced data available. These will usually be written by the Investigators and supplied to the NSSDC as specified in the PDMP:

(2) *Catalogs of data.* Lists of all data from space science flight experiments available from the NSSDC, issued as needed. The forms in which the data are available will also be indicated; i.e., microfilm, tapes, printouts, etc. Catalogs of data available from projects that maintain their own data base, such as Guest Investigator or facility missions, will also be distributed if the PDMP so specifies.

(3) *Data Announcements.* Announces those data sets which are known to have wide appeal when such sets become available.

(g) *Other services.* The NSSDC will provide technical assistance to data users. In some cases, this may involve the conversion of data records into compatible formats to facilitate correlation of data from various sources. When facilities are available the NSSDC will provide lecture rooms, study rooms, and office space for use by visiting scientists for research involving the use of available data.

(h) *User charges.* (1) User charges will, as a matter of policy, be in accordance with the policies set forth in the Bureau of the Budget Circular A-25 and NASA Financial Management Manual 9080. The methods to be used in computing the user charges will be reviewed by the Director, Financial Management Division, NASA Headquarters.

(2) Appropriate fees will be charged for reproduction, computer and dissemination services provided to individual users by the Data Center. The NSSDC may perform conversion of data records and general technical assistance without charge to individual users. Fees for reproduction and dissemination services may be waived by the NSSDC Director if:

(i) The cost of collecting the fee would be an unduly large proportion of the amount of the fee.

(ii) The data furnished are required to accomplish a research task approved by NASA Headquarters or field installations.

(iii) The data are to be used by a Federal, State, or local government agency or by nonprofit organization.

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

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Subpart 9—Annual Report

1206.900 Requirements for annual report.

AUTHORITY: Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1561, unless otherwise noted.

SOURCE: 40 FR 7244, Feb. 19, 1975, unless otherwise noted.

Subpart 1—Basic Policy

§ 1206.100 Scope of part.

This Part 1206 establishes the policies, responsibilities, and procedures for the release to members of the public of agency records which are under the jurisdiction of the National Aeronautics and Space Administration. This part applies to information and agency records located at NASA Headquarters, at NASA Field Installations, and at NASA component installations, as defined in Part 1201 of this chapter.

§ 1206.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) The term "agency records" or "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by NASA in pursuance of Federal law or in connection with the transaction of public business and preserved by NASA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of data contained therein. It does not include tangible objects or articles, such as structures, furniture, paintings, sculptures, exhibits, models, vehicles or equipment; library or museum material made or acquired and preserved solely for reference or exhibition purposes; or records of another agency, a copy of which may be in NASA's possession.

(b) The term "initial determination" means a decision by a NASA official, in response to a request by a member of the public for an agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under Subpart 3 of this part.

(c) The term "appeal" means a request by a member of the public to the Administrator or designee, or, in the case of records as specified in § 1206.504, to the Inspector General or designee for reversal of any adverse initial determination the requestor has received in response to a request for an agency record.

(d) The term "final determination" means a decision by the Administrator or designee, or, in the case of records as specified in § 1206.504, by the Inspector General or designee on an appeal.

(e) The term "working days" means all days except Saturdays, Sundays and legal public holidays.

(f) As used in § 1206.608, the term "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of a particular request for agency records—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the NASA Information Center processing the request (see Subpart 6 of this part for procedures for processing a request for agency records);

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NASA having substantial subject-matter interest therein.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28399, May 27, 1981]

§ 1206.102 General policy.

(a) In accordance with section 203(a)(3) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(a)(3)), it has been and continues to be NASA policy to provide for the "widest practicable and appropriate dissemination of information concerning its activities and the results thereof."

(b) In compliance with the "Freedom of Information" amendments to the Administrative Procedure Act (5 U.S.C. 552, as amended by Public Laws 90-23 and 93-502), a positive and continuing obligation exists for NASA to make available upon request by members of the public to the fullest extent practicable all agency records under its jurisdiction, as described in Subpart 2 of this part, except to the extent that they may be exempt from disclosure under Subpart 3 of this part.

Subpart 2—Records Available

§ 1206.200 Types of records to be made available.

(a) Records required to be published in the FEDERAL REGISTER. The following records are required to be published in the FEDERAL REGISTER, for codification in Title 14, Chapter V, of the CFR.

(1) Description of NASA Headquarters and field organization and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which NASA's functions are channeled and determined, including the nature, and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;

(5) Each amendment, revision, or repeal of the foregoing.

(b) *Agency opinions, orders, statements, and manuals.* (1) Unless they are exempt from disclosure under Subpart 3 of this part, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, such as opinions of the NASA Board of Contract Appeals;

(ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public.

(2) In connection with all records required to be made available or published under this paragraph (b), identifying details shall be deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. However, in each case the justification for the deletion shall be explained fully in writing. A copy of such justification shall be attached to the front of the portion of the record made available to the requester.

(3) In connection with all records required to be made available or published under this paragraph (b) which are issued, adopted, or promulgated after July 4, 1967, except to the extent they are exempt from disclosure under Subpart 3 of this part, current indexes providing identifying information will be maintained and made available for public inspection and copying or purchase (see § 1206.402).

(c) *Other agency records.* In addition to the records made available or published under paragraphs (a) and (b) of this section, NASA shall, upon request for other records made in accordance with this part, make such records promptly available to any person, unless they are exempt from disclosure under Subpart 3 of this part, or unless they may be purchased from other readily available sources, as provided in § 1206.201.

§ 1206.201 Records which have been published.

Publication in the Federal Register is a means of making certain agency records available to the public. Also, the Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards (Department of Commerce) is a source of information concerning agency records or actions. Various other NASA publications and documents, and indexes thereto, are available from other sources, such as the U.S. Superintendent of Documents, the National Technical Information Service (Department of Commerce), and the Earth Resources Observation Systems (EROS) Data Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request therefor unless they cannot be purchased readily from available sources. If a publication or document is readily available from a source other than NASA, the requester shall be informed of the procedures to follow to obtain the publication or document.

§ 1206.202 Deletion of segregable portions of a record.

If a record requested by a member of the public contains both information required to be made available and that which is exempt from disclosure under Subpart 3 of this part and the portion of the record that is required to be made available is reasonably segregable from the portion that is exempt, the portion that is exempt from disclosure shall be deleted and the balance of the record shall be made available to the requester. If the non-exempt portion of the record appears to be unintelligible or uninformative, the requester shall be informed of that fact, and such non-exempt portion shall not be sent to the requester unless he thereafter specifically requests it.

§ 1206.203 Creation of records.

Records will not be created by compiling selected items from the files at the request of a member of the public, nor will records be created to provide the requester with such data as ratios, proportions, percentages, frequency distributions, trends, correlations, or comparisons.

§ 1206.204 Records of interest to other agencies.

If a NASA record is requested and another agency has a substantial interest in the record, such an agency shall be consulted on whether the record shall be made available under this part (see § 1206.101(f)(3)). If a record is requested that is a record of another agency, the request shall be returned to the requester, as provided in § 1206.604(c).

§ 1206.205 Incorporation by reference.

Matter which is reasonably available to the members of the public affected thereby shall be deemed published in the Federal Register when incorporated by reference in material published in the FEDERAL REGISTER (pursuant to the FEDERAL REGISTER regulation on incorporation by reference, 1 CFR Part 51).

§ 1206.206 Availability for copying.

Except as provided in § 1206.201, the availability of a record for inspection shall include the opportunity to extract information therefrom or to purchase copies.

§ 1206.207 Copies.

The furnishing of a single copy of the requested record will constitute compliance with this part.

§ 1206.208 Release of exempt records.

If a record which has been requested is exempt from disclosure under Subpart 3 of this part, the record may nevertheless be made available under the procedures of Subpart 6 of this part if it is determined by an official authorized to make either an initial determination or a final determination that such action would not be inconsistent with a purpose of the exemptions set forth in Subpart 3 of this part.

Subpart 3—Exemptions

§ 1206.300 Exemptions.

(a) Under 5 U.S.C. 552(b) agency records falling within the exemptions of paragraph (b) of this section are not required to be made available under this part. Such records may nevertheless be made available if it is determined that such actions would not be inconsistent with a purpose of the exemption (see § 1206.208).

(b) The requirements of this part to make agency records available do not apply to matters that are—

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of NASA;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with NASA;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

[40 FR 7244, Feb. 19, 1975, as amended at 42 FR 17869, Apr. 4, 1977]

§ 1206.301 Limitation of exemptions.

(a) This Part 1206 does not authorize the withholding of information or the availability of records to the public, except as specifically stated in this part.

(b) Nothing in this part shall be construed as authority to withhold information from Congress.

Subpart 4—Location for Inspection and Request of Agency Records

§ 1206.400 Information centers.

NASA will maintain Information Centers as set forth in this subpart.

§ 1206.401 Location of NASA information centers.

NASA will maintain the following Information Centers, at which agency records may be inspected, from which copies of agency records may be requested and at which copies of agency forms may be obtained:

(a) NASA Headquarters Information Center, National Aeronautics and Space Administration, Washington, DC 20546.

(b) NASA Information Center, Ames Research Center, Moffett Field, CA 94035.

(c) NASA Information Center, Hugh L. Dryden Flight Research Center, Post Office Box 273, Edwards, CA 93523.

(d) NASA Information Center, Goddard Space Flight Center, Greenbelt, MD 20771.

(e) NASA Information Center, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(f) NASA Information Center, Langley Research Center, Langley Station, Hampton, VA 23365.

(g) NASA Information Center, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

(h) NASA Information Center, Lyndon B. Johnson Space Center, Houston, TX 77058.

(i) NASA Information Center, George C. Marshall Space Flight Center, Huntsville, AL 35812.

(j) NASA Information Center, National Space Technology Laboratories, Bay St. Louis, MS 39520.

(k) NASA Information Center, NASA Resident Procurement Office (JPL), 4800 Oak Grove Drive, Pasadena, CA 91103.

(l) NASA Information Center, Wallops Flight Center, Wallops Island VA 23337.

[41 FR 9307, Mar. 4, 1976, as amended at 42 FR 17869, Apr. 4, 1977]

§ 1206.402 Documents available for inspection at NASA information centers.

(a) Each NASA Information Center will have available for inspection, as a minimum, a current version of the following documents:

(1) The Freedom of Information Act (5 U.S.C. 552, as amended by Pub. L. 90-23 and Pub. L. 93-502);

(2) Title 14, Chapter V, and Title 41, Chapter 18, Code of Federal Regulations, and material published in the FEDERAL REGISTER for codification but not yet included in the Code of Federal Regulations;

(3) A master list and index of NASA Issuances, and a copy of all such Issuances;

(4) A list and index of the management issuances of the NASA installation at which the Information Center is located, and a copy of such issuances;

(5) NASA's Scientific and Technical Aerospace Reports (STAR) and current indexes thereto;

(6) Cumulative Index to Selected Speeches and News Releases issued by NASA Headquarters;

(7) Index/Digest of Decisions, NASA Board of Contract Appeals;

(8) Decisions of the NASA Contract Adjustment Board and a current index thereto;

(9) NASA Handbook NHB 5500.1A containing an index to decisions of the NASA Inventions and Contributions Board on Petitions for Patent Waivers;

(10) Copies of Environmental Impact Statements filed by NASA under the National Environmental Policy Act of 1969;

(11) Collection of all issues of "NASA Activities"; and

(12) List of licenses granted under NASA-owned patents.

(b) Because the indexes listed in paragraph (a) of this section are voluminous and because current versions thereof will be available for inspection at NASA Information Centers, from which copies of the indexes may be requested under § 1206.603, it is determined and so ordered that publication of the indexes quarterly in the FEDERAL REGISTER would be unnecessary and impractical.

§ 1206.403 Duty hours.

The NASA Information Centers listed in § 1206.401 shall be open to the public during all regular workdays, from 9 a.m. to 4 p.m.

Subpart 5—Responsibilities

SOURCE: 40 FR 54240, Nov. 21, 1975, unless otherwise noted.

§ 1206.500 Associate Deputy Administrator.

Except as otherwise provided in § 1206.504, the Associate Deputy Administrator is responsible for the following:

(a) Providing overall supervision and coordination of the implementation of the policies and procedures set forth in this Part 1206;

(b) After consultation with the General Counsel and the Director, Public Affairs Division, making final determinations under § 1206.607, within the time limits specified in Subpart 6 of this part;

(c) Providing consultation on whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(d) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for a final determination.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 54240, Nov. 21, 1975, as amended at 46 FR 28400, May 27, 1981]

§ 1206.501 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and this part, and for the handling of litigation in connection with a request for an agency record under this part.

§ 1206.502 Field and component installations.

(a) Except as otherwise provided in § 1206.504, the Director of each NASA Installation or the Official-in-Charge of each Component Installation is responsible for the following:

(1) After consultation with the Chief Counsel of the Counsel cahrged with providing legal advice to a Field or a Component Installation, making initial determinations under §§ 1206.603 and 1206.604;

(2) After consultation with the Associated Deputy Administrator, determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(3) Insuring that requests for agency records under the cognizance of his respective installation are processed and initial determinations made within the time limits specified in Subpart 6 of this part.

(b) If so designated by the Director or Official-in-Charge of the respective installation, the principal Public Affairs Officer at the installation may perform the functions set forth in paragraphs (a)(1) and (2) of this section.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 54240, Nov. 21, 1975, as amended at 46 FR 28400, May 27, 1981]

§ 1206.503 NASA Headquarters.

(a) Except as otherwise provided in § 1206.504, the Director, Headquarters Administration Division, is responsible for the following:

(1) Preparing the annual reports required by § 1206.900, including establishing reporting procedures throughout NASA to facilitate the preparation of such report;

(2) After consultation with the Office of General Counsel, making initial determinations under §§ 1206.603 and 1206.604;

(3) After consultation with the Associate Deputy Administrator, determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(4) Insuring that requests for agency records under the cognizance of Headquarters are processed and initial determinations made within the time limits specified in Subpart 6 of this part.

(b) The functions set forth in paragraphs (a) (2) and (3) of this section may be delegated by the Director, Headquarters Administration Division, to the Director, Management Support Division, Office of External Relations, who may redelegate this responsibility to a subordinate.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28400, May 27, 1981; 48 FR 16651, Apr. 19, 1983]

§1206.504 Inspector General.

(a) The Inspector General or designee is responsible for making final determinations under § 1206.607 within the time limits specified in Subpart 6 of this part, with respect to audit and investigative documents originating in the Office of the Inspector General, documents from outside the Government related to an audit or investigation, documents prepared in response to a request from or addressed to the Office of the Inspector General, or other documents originating within the Office of the Inspector General, after consultation with the General Counsel or designee on an appeal of an initial determination to the Inspector General.

(b) The Assistant Inspectors General or their designees are responsible for making initial determinations under §§ 1206.603 and 1206.604 with respect to audit and investigative documents originating in the Office of the Inspector General, documents from outside the Government related to an audit or investigation, documents prepared in response to a request from or addressed to the Office of the Inspector General, or other documents originating with the Office of the Inspector General, after consultation with the Attorney-Advisor to the Inspector General.

(c) The Inspector General or designee is responsible for insuring that requests for agency records as specified in paragraphs (a) and (b) of this section are processed and initial determinations are made within the time limits specified in Subpart 6 of this part.

(d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial or final determination, for records as specified in paragraphs (a) and (b) of this section.

(e) Records as specified in paragraphs (a) and (b) of this section include any records located at Regional Inspector General Offices as well as records located at the Headquarters' Office of the Inspector General.

(5 U.S.C. 552 and 5 U.S.C. app.)

[46 FR 28400, May 27, 1981]

§ 1206.505 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this subpart is delegated to the officials named in this subpart.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1977. Redesignated at 46 FR 28400, May 27, 1981]

Subpart 6—Procedures

§ 1206.600 Requests for records.

A member of the public may request an agency record by mail or in person from the Information Center having cognizance over the record requested or from the NASA Headquarters Information Center.

§ 1206.601 Mail requests.

In view of the time limits under 5 U.S.C. 552(a)(6) for an initial determination on a request for an agency record (see § 1206.603), a request by mail must meet the following requirements:

(a) The request must be addressed to an appropriate NASA Information Center (see § 1206.401) or otherwise be clearly identified on the envelope and in the letter as a request for an agency record under the "Freedom of Information Act".

(b) The request must identify the record requested or reasonably describe it in such a manner as to enable a professional NASA employee who is familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. NASA need not comply with a blanket or categorical request (such as "all matters relating to" a general subject) where it is not feasible reasonably to determine what is sought. NASA will in good faith endeavor to identify and locate the record sought and will consult with the requester when necessary and appropriate for that purpose. However, as provided in § 1206.203, NASA will undertake no obligation to compile or create information or records not already in existence at the time of the request.

(c) If a fee is chargeable under Subpart 7 of this part for search or duplication costs incurred in connection with a request for an agency record, and the requestor knows the amount of the fee at the time of the request, the request should be accompanied by a check or money order payable in that amount to the "National Aeronautics and Space Administration." Cash or stamps should not be sent by mail. If the amount of the fee chargeable is not known at the time of the request, the requestor will be notified in the initial determination (or in a final determination) of the amount of the fee chargeable (see § 1206.608(c)). For circumstances in which an advance estimate of fees shall be provided to the requestor, see § 1206.701.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28400, May 27, 1981]

§ 1206.602 Requests in person.

(a) A member of the public may request an agency record in person at a NASA Information Center (see § 1206.401) during the duty hours of the center.

(b) A request at an Information Center must identify the record requested or reasonably describe it as provided in § 1206.601(b).

(c) If the record requested is located at the Information Center or otherwise readily obtainable, it shall be made available to the requestor upon the payment of any fees that are chargeable (see Subpart 7 of this part), which fees may be paid in cash or by a check or money order payable to the "National Aeronautics and Space Administration." If the record requested is not located at the Information Center or otherwise readily obtainable, the request will be docketed at the Information Center and processed in accordance with the procedures in §§ 1206.603 and 1206.604, with any fee chargeable being handled in accordance with § 1206.601(c).

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28400, May 27, 1981]

§ 1206.603 Procedures and time limits for initial determinations.

(a) Except as provided in § 1206.608, an initial determination on a request for an agency record, addressed in accordance with § 1206.601(a) or made in person at a NASA Information Center, shall be made, and the requester shall be sent notification thereof, within ten working days after receipt of the request, as required by 5 U.S.C. 552(a)(6).

(b) An initial determination on a request for an agency record by mail not addressed in accordance with § 1206.601 (a) shall be made, and the requester shall be sent notification thereof, within ten working days after the correspondence is recognized as a request for an agency record under the "Freedom of Information Act" and received by the appropriate NASA Information Center. With respect to such a request, unless an initial determination can reasonably be made within ten working days of the original receipt, the request will be promptly acknowledged and the requester notified of the date the request was received at that Information Center and that an initial determination on the request will be made within ten working days of that date.

(c) If it is determined that the requested record (or portions thereof) will be made available and the fee chargeable is $25.00 or less, a copy of the record requested (or portions thereof) shall be sent to the requester with the initial determination or, if that is not feasible, promptly after the initial determination is made. If the fee chargeable exceeds $25.00 (unless the requester has indicated a willingness to pay a higher fee), the requester will be informed of the fee in the initial determination, and the requested record will be sent to the requester promptly upon receipt of the required fee.

(d) Any notification of an initial determination that does not comply fully with the request for an agency record shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requestor of the right to appeal to the Administrator, or the Inspector General, as appropriate, under § 1206.605.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28400, May 27, 1981]

§ 1206.604 Request for records which exist elsewhere.

(a) If a request for an agency record is received by an Information Center not having cognizance of the record (for example, where a request is submitted to one NASA installation or Headquarters and the requested record exists only at another NASA installation), the Information Center receiving the request shall promptly forward it to the NASA Information Center having cognizance of the record requested. That center shall acknowledge the request and inform the requester that an initial determination on the request will be sent within ten working days from the date of receipt by such center.

(b) If a request is received for agency records which exist at two or more centers, the center receiving the request shall undertake to comply with the request, if feasible, or to forward the request (or portions thereof) promptly to a more appropriate center for processing. The requester shall be kept informed of the actions taken to respond to the request.

(c) If a request is received by a NASA Information Center for a record of another agency, the requester shall promptly be informed of that fact, and the request shall be returned to the requester, with advice as to where the request should be directed.

§ 1206.605 Appeals.

(a) A member of the public who has requested an agency record in accordance with § 1206.601 or § 1206.602, and who has received an initial determination which does not comply fully with the request, may appeal such an adverse initial determination to the Administrator, or, for records as specified in § 1206.504, to the Inspector General under the procedures of this section.

(b) The Appeal must:

(1) Be addressed to the Administrator, NASA Headquarters, Washington, DC 20546, or, for records as specified in § 1206.504, to the Inspector General, NASA Headquarters, Washington, DC 20546;

(2) Be identified clearly on the envelope and in the letter as an "Appeal under the Freedom of Information Act";

(3) Include a copy of the request for the agency record and a copy of the adverse initial determination;

(4) To the extent possible, state the reasons why the requester believes the adverse initial determination should be reversed; and

(5) Be sent to the Administrator or the Inspector General, as appropriate, within 30 calendar days of the date of receipt of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see § 1206.607(a)) shall run from the date of such waiver.

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28400, May 27, 1981]

§ 1206.606 Requests for additional records.

If, upon receipt of a record (or portions thereof) following an initial determination to comply with a request, the requestor believes that the materials received do not comply with the request, the requestor may elect either to request additional records under the procedures of § 1206.601 or § 1206.602, or to file on appeal under the procedures of § 1206.605, in which case the appeal must be sent to the Administrator, or to the Inspector General, in the case of records as specified in § 1206.504, within 30 days of receipt of the record (or portions thereof), unless good cause is shown for any additional delay.

(5 U.S.C. 552 and 5 U.S.C. app.)

[46 FR 28400, May 27, 1981]

§ 1206.607 Actions on appeals.

(a) Except as provided in § 1206.608, the Administrator or designee, or in the case of records as specified in § 1206.504, the Inspector General or designee, shall make a final determination on an appeal and notify the requestor thereof, within 20 working days after the receipt of the appeal.

(b) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.

(c) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:

(1) Explain the basis on which the record (or portions thereof) will not be made available;

(2) Include the name and title of the person making the final determination;

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4); and

(4) Enclose a copy of 5 U.S.C. 552(a)(4).

(5 U.S.C. 552 and 5 U.S.C. app.)

[40 FR 7244, Feb. 19, 1975, as amended at 46 FR 28401, May 27, 1981]

§ 1206.608 Time extensions in unusual circumstances.

(a) In "unusual circumstances" as that term is defined in § 1206.101(f), the time limits for an initial determination (see §§ 1206.603 and 1206.604) and for a final determination (see § 1206.607) may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an agency record.

(b) If an extension of time under this section would be required, the requester shall be promptly notified of the reasons therefor and the date when a determination will be sent.

(c) If a record described in a request cannot be located within the ten-working-day time limit for an initial determination, after consultation with a professional NASA employee who is familiar with the subject area of the request, that fact normally will justify an initial determination that the record requested cannot be identified or located, rather than a decision that an extension of time under this section would be appropriate.

(d) In exceptional circumstances, if it would be impossible to complete a search for or review of agency records within the ten-working-day period for an initial determination, an official authorized to make an initial determination or his designee may seek an extension of time from the requester. If such an extension of time can be agreed upon, that fact should be clearly documented and the initial determination made within the extended time period; if not, an initial determination that the record cannot be identified or located, or reviewed, within the ten-working-day time limit shall be made under § 1206.603.

§ 1206.609 Litigation.

In any instance in which NASA is sued in connection with a request for an agency record under this part, the matter shall promptly be referred to the General Counsel together with a report on the details and status of the request. In such a case, if a final determination with respect to the request has not been made, such a determination shall be made as soon as possible, under procedures prescribed by the General Counsel in each case.

Subpart 7—Search and Duplication Fees

§ 1206.700 Schedule of fees.

The fees specified in this section shall be charged for searching for or duplicating an agency record made available in response to a request under this part.

(a) *Copies.* For copies of documents, such as letters, memoranda, statements, reports, contracts, etc., $0.10 per copy of each page. For copies of oversize documents, such as maps, charts, blueprints, etc., $0.15 for each reproduced copy per square foot. These charges for copies include the time spent in duplicating the documents.

(b) *Clerical searches.* For each one quarter hour spent by clerical personnel in searching for an agency record in response to a request under this part, $1.00.

(c) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent by such higher level personnel in searching for a requested record, $2.50.

(d) *Computerized records.* Because of the diversity in the types and configurations of computers which may be required in responding to requests for agency records maintained in whole or in part in computerized form, it is not feasible to establish a uniform schedule of fees for search and printout of such records. In most instances, records maintained in computer data banks are available also in printed form and the standard fees specified in paragraph (a) of this section shall apply. If the request for an agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in paragraphs (b) and (c) of this section. The charge for the computer time involved and for any special supplies or materials used, such as magnetic tape or Hollerith cards, shall not exceed the direct cost to NASA. Before any computer search or printout is undertaken in response to a request for an agency record, the requester shall be notified of the applicable unit costs involved and the total estimated cost of the search or printout.

(e) *Other search and duplication costs.* Reasonable standard fees, other than as specified in paragraphs (a) through (d) of this section, may be charged for additional direct costs incurred in searching for or duplicating an agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(f) *Unsuccessful or unproductive searches.* Search charges, as set forth in paragraph (b) and (c) of this section, may be made even when an agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available under Subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see § 1206.701) and that search fees will be charged even if no record can be located and made available.

(g) *Examination and related tasks in screening records.* No charge shall be made for the time spent in resolving legal or policy issues in connection with a request for an agency record under this part, in examining records to determine whether they will be made available to the requester, or in monitoring the inspection of requested records by a member of the public.

§ 1206.701 Advance estimate or deposit before incurring costs.

(a) In the circumstance specified in paragraphs (a) (1) through (4) of this section, before NASA undertakes to search for an agency record and thereby subjects the requester to a fee under this subpart, NASA will promptly notify the requester of the estimated fees chargeable for searching for and duplicating the requested record. Such an advance estimate shall be provided in the following circumstances:

(1) If the requester specifically requests an estimate;

(2) If the search involves computerized records (see § 1206.700(d));

(3) If the search and duplication would involve transportation costs (see § 1206.700(e)); or

(4) If the estimated cost of the search for an agency record exceeds $25.00 and it cannot be determined in advance if the record requested can be identified or located and made available to the requester.

(b) In appropriate cases, an advance deposit may be required before NASA will undertake to search for and duplicate an agency record.

(c) A notice of estimated fees or request for advance deposit shall also extend an offer to the requester to confer with knowledgeable NASA personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester.

(d) If an estimate is provided under this section, the request for the record shall not be deemed to have been received until the requester agrees to bear the estimated cost or, if an advance deposit is requested, provides such a deposit.

§ 1206.702 Waiver of fees.

(a) The NASA official making an initial or final determination on a request for an agency record or the Official-in-Charge of each Information Center (see § 1206.401) may waive all or part of a fee which would be chargeable under this subpart if the official determines that such action is in the public interest because making the record available can be considered as primarily benefiting the general public.

(b) Ordinarily, fees will not be charged where they would amount in the aggregate, for a request or series of related requests, to less than $3.00.

[40 FR 7244, Feb. 19, 1975, as amended at 40 FR 54240, Nov. 21, 1975]

§ 1206.703 Certification.

In accordance with the provisions of 31 U.S.C. 483a, a charge of $1.00 shall be made for each certification of true copies of agency records.

§ 1206.704 Form of payment.

Payment by mail shall be made by check or money order payable to the "National Aeronautics and Space Administration" and sent to the NASA Information Center which processed the request.

(5 U.S.C. 552 and 5 U.S.C. app.)

[46 FR 28401, May 27, 1981]

Subpart 8—Failure to Release Records to the Public

§ 1206.800 Failure to release records to the public.

(a) Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the FEDERAL REGISTER under § 1206.200(a) and not so published.

(b) A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied upon, used, or cited as precedent by NASA against any member of the public only if it has been indexed and either made available or published as provided by § 1206.200(b) or if the member of the public has actual and timely notice of the terms thereof.

(c) Failure to make available an agency record required to be made available under this part could provide the jurisdictional basis for a suit against NASA under 5 U.S.C. 552(a)(4) (B) through (G), which provides as follows:

> (B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.
>
> (C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the

pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a preceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

Subpart 9—Annual Report

§ 1206.900 Requirements for annual report.

On or before March 1 of each calendar year, NASA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(a) The number of determinations made by NASA not to comply with requests for records made to the Agency under Subpart 6 of this part and the reasons for each such determination;

(b) The number of appeals made by persons under Subpart 6 of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(d) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4) (B) through (G) (see § 1206.800(c)), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of the current version of this Part 1206 and any other rules or regulations made by NASA regarding 5 U.S.C. 552;

(f) A copy of the current fee schedule and the total amount of fees collected by NASA for making records available under this part; and

(g) Such other information as indicates efforts by NASA to administer fully this part.

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AUTHORITY: E.O. 11222, of May 11, 1965, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.104, unless otherwise noted.

SOURCE: 32 FR 14648, Oct. 21, 1967, unless otherwise noted.

§ 1207.735-1 Scope of part.

The provisions of this part prescribe regulations for the maintenance of the high ethical standards of conduct required of NASA employees, including special Government employees as they are covered by this part in carrying out their duties and responsibilities.

§ 1207.735-2 Applicability.

(a) The provisions of Subparts A, B, C and D of this part are applicable to:

(1) All regular officers and employees of NASA (referred to hereinafter as "employees"), but not special Government employees as defined in § 1207.735-601(a), and

(2) All civilian and military personnel of other Government agencies regularly detailed to NASA. (Also referred to hereinafter as "employees".)

(b) The provisions of Subpart E are applicable to:

(1) NASA employees except special Government employees as defined in § 1207.735-601(a), and

(2) Civilian and military personnel of other Government agencies regularly detailed to NASA; however, disciplinary action may be effected against such civilian or military personnel only by the parent employing agency or military service.

(c) The provisions of Subpart F are applicable only to special Government employees as defined in § 1207.735-601(a).

(d) The provisions of Subpart H are applicable only to former NASA government employees.

(18 U.S.C. 207; 5 CFR Part 737)

[32 FR 14648, Oct. 21, 1967, as amended at 46 FR 51381, Oct. 20, 1981]

Subpart A—General Provisions

§ 1207.735-100 Ethical standards of conduct.

Each NASA employee will refrain from any use of his official position which is motivated by, or has the appearance of being motivated by, the desire for private gain for himself or other persons. He must conduct himself in such a manner that there is not the slightest suggestion of the extracting of private advantage from his Government employment. Pursuant to this policy, each NASA employee will observe the following standards of conduct:

(a) He will not as a result of, or on the basis of any information derived from his official position or from the official position of other NASA employees with whom he associates, engage, directly or indirectly, in any business transaction or arrangement, including the buying or selling of securities or recommending the purchase or sale of securities to other persons.

(b) He will exercise care in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of performing his Government duties.

(c) If he acquires information in the course of performing his Government duties that is not generally available to those outside the Government, he will not use this information to further a private interest or for the special benefit of a business or other entity in which he has a financial or other interest.

(d) He will not use his Government position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or to other persons.

(e) He will avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this part), which might result in, or create the appearance of:

(1) Using his public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding Government efficiency or economy;

(4) Losing his independence or impartiality of action;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1207.735-101 Other general standards of conduct.

(a) *Use of Government property.* An employee will not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

(b) *Indebtedness.* The indebtedness of NASA employees is considered to be essentially a matter of their own concern. Except as otherwise provided by law, NASA will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, NASA employees are expected to honor in a proper and timely manner, debts which are acknowledged by the employee to be valid or which have been reduced to final judgment by a court, or to make or adhere to satisfactory arrangements for the settlement of such debts. In accordance with Pub. L. 93-647 (42 U.S.C. 659), NASA may become involved in the attachment of NASA employee wages or salary for enforcement of child support and alimony obligations. Employees are also expected to meet their responsibilities for payment of Federal, State, and local taxes. For the purpose of this subparagraph, "in a proper and timely manner" means in a manner which NASA determines does not, under the circumstances, reflect adversely on NASA as the employing agency.

(c) *Gambling, betting, and lotteries.* While on Government owned or leased property, or while on duty for the Government, NASA employees will not participate in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in participating in a game for money or property; or in selling or purchasing a numbers slip or ticket. However, participation in federally sponsored fund-raising activities conducted pursuant to Executive Order 10927, or in similar NASA-approved activities, is not precluded.

(d) *General conduct prejudicial to the Government.* NASA employees will not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.

(e) [Reserved]

(f) *Miscellaneous statutory provisions.* Each employee will become acquainted with the statutory provisions that relate to his ethical and other conduct, among which the following are particularly relevant:

(1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflict of interests, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibitions against (i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (ii) the disclosure of private or proprietary information (18 U.S.C. 1905).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 638a(c)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against (i) embezzlement of Government money or property (18 U.S.C. 641); (ii) failing to account for public money (18 U.S.C. 643); and (iii) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against proscribed political activities ("The Hatch Act"—5 U.S.C. 7324-7327; 18 U.S.C. 602, 603, 607, and 608).

(17) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(18) The prohibition against a public official appointing, employing, promoting or advancing a relative of the official in his agency, or advocating any such actions in his agency for such a relative (5 U.S.C. 3110).

(19) The prohibition against (i) the disclosure of crop information and speculation thereon (18 U.S.C. 1902); and (ii) the issuance of false crop reports (18 U.S.C. 2072).

(20) The prohibition against the acceptance of excessive honorariums (Pub. L. 94-283).

The foregoing statutes are available for review in the appropriate installation Counsel's office.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 2632, Jan. 19, 1976; 41 FR 31526, July 29, 1976]

Subpart B—Acceptance of Gifts, Gratuities, or Entertainment

SOURCE: 41 FR 2632, Jan. 19, 1976, unless otherwise noted.

§ 1207.735-200 Scope of subpart.

This part establishes NASA policy with respect to the acceptance of gifts, gratuities, entertainment (including food, refreshments, tickets or invitations to performances and other events), favors, loans, transportation, accommodations, or any other thing of monetary value by NASA employees. Any violation of these regulations and/or any of the criminal statutes referred to herein will subject the employee to administrative disciplinary action and/or criminal prosecution.

§ 1207.735-201 Policy.

(a) It is NASA policy not to interfere in the private lives of NASA employees and their families. However, certain conduct involving acceptance of gifts, gratuities, entertainment (including food, refreshments, tickets or invitations to performances and other events), favors, loans, transportation, accommodations, or any other thing of monetary value must be regulated in view of the nature of the official duties of the employee and the special responsibilities that are assumed by a person who accepts Federal employment.

(b) Except as provided in paragraphs (d), (f), and (g) of this section, the direct or indirect solicitation or acceptance by a NASA employee or his spouse or minor child of any gift, gratuity, entertainment (including food, refreshments, tickets or invitations to performances and other events), favors, loans, transportation, accommodations, or any other thing of monetary value from any person, corporation, or group is forbidden if the person, corporation or group:

(1) Has or is seeking to obtain contractual or other business or financial relationships with NASA, or

(2) Has interests which may be substantially affected by such employee's performance or nonperformance of his official duty; or

(3) Is in any way attempting to affect the employee's official action.

(c) There are certain exceptions to the foregoing general rule which are set forth in paragraph (d) of this section. Those exceptions are to be strictly construed. In determining whether one or more of the exceptions apply in any particular circumstance, each NASA employee shall avoid any situation having an appearance which might, whether justifiably or not, bring discredit to or embarrass the Government or NASA. Each NASA employee will so govern his conduct in the light of this part as to have no difficulty in justifying his actions if required to do so.

(d) The following are exceptions to the general rule set forth in paragraph (b) of this section:

(1) Acceptance of food and soft drinks of nominal value at a contractor's plant on an infrequent basis when the conduct of official business within the plant will be facilitated and when no provision can be made for individual payment. An employee shall avoid all other situations, e.g., in private clubs, where there would be no provision for individual payment for his food or refreshments.

(2) Instances in which the interests of the Government are served by participation of a NASA employee in widely attended luncheons, dinners, and similar gatherings sponsored by industrial, technical, or professional associations for the discussion of matters of mutual interest. Participation in such events is permitted only when the host is the association and not a private company and only when approved by the employee's supervisor as being a part of or related to his official duties. Acceptance of gratuities, food, or refreshments from a private company in connection with such association's activities is forbidden.

(3) Acceptance of gifts, favors, or entertainment, where there is a family relationship between the employee, or between his spouse, children, or parents, and the donor, where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gift, favor, or entertainment, and where it is clear that the gift, favor, or entertainment

is paid for by the donor and not by a private company.

(4) Acceptance of modest food and refreshments at the host's home, where there is an obvious personal relationship between the employee and the host, where it is clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the food and refreshments, and where it is clear that the food and refreshments are paid for by the host and not by a private company.

(5) Purchase of articles at advantageous rates where such rates are offered to Government employees as a class.

(6) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans.

(7) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of trivial value, clearly less than $5.00.

(8) Acceptance of contractor-provided local or intrastate transportation while on official business when alternative arrangements are clearly impracticable or where such acceptance will facilitate the conduct of official business. Acceptance of intrastate transportation is permitted only when specifically authorized in the employee's travel authorization, or otherwise authorized in writing by the employee's supervisor, as being in the interest of the Government.

(9) Acceptance of transportation, accommodations, subsistence, or services furnished under a reimbursable arrangement with NASA, from an industrial, technical, or professional association, when authorized in the employee's travel authorization as being in the interest of the Government. When transportation, accommodations, subsistence, or services are furnished in kind by such an association, appropriate deductions shall be made in the travel, per diem, and other allowances otherwise payable to the employee. When transportation, accommodations, subsistence, or services are provided under a cash reimbursable arrangement, the reimbursement must be paid directly to NASA by check payable to the National Aeronautics and Space Administration; the employee will be reimbursed for necessary expenses by NASA in accordance with applicable laws and regulations. In no case shall a NASA employee accept benefits which are under prudent standards extravagant or excessive in nature.

(10) Special situations in which the Associate Administrator for Center Operations, after consultation with the General Counsel, determines in advance in writing that the interest of the Government will be served by an employee's participation, in his official capacity and as a designated NASA representative, in a public ceremony or other event at the expense of a private company.

(11) Acceptance of transportation or other services provided by a private company in special situations in which the Administrator or the Deputy Administrator determines in advance in writing that acceptance of such transportation or other services will facilitate the conduct of official business and be in the best interest of the Government.

(e) A gift or gratuity, the receipt of which is prohibited under paragraph (b) of this section, will be returned to the donor. If return is not possible, the gift or gratuity will be turned over to a public or charitable institution and a report of such action, and the reasons why return was not feasible, will be made to the employee's supervisor. When possible, the donor should also be informed of such action.

(f) An employee will not solicit a contribution from another employee for a gift to an official superior make a donation as a gift to an official superior, or accept a gift presented as a contribution from an employee receiving less salary than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness or death, or retirement.

(g) An employee will not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342 (see NASA instruction NMI 1030.1A).

§ 1207.735-202 Statutory prohibitions.

The prohibitions set forth in § 1207.735-201 are to be construed as being in addition to and not in limitation of:

(a) The prohibitions of 18 U.S.C. 201, as amended, relating to the corrupt solicitation or receipt of, or agreement to receive, anything of value in connection with an employee's performance of his official duty; and

(b) The prohibitions of 18 U.S.C. 203, as amended, relating to the unlawful solicitation or receipt of, or agreement to receive, compensation for services rendered by an employee in connection with matters affecting the Government.

Subpart C—Outside Employment and Other Activity

§ 1207.735-300 Scope of subpart.

This subpart prescribes NASA policy and procedures regarding outside employment or other outside activity of NASA employees.

§ 1207.735-301 Definition.

As used in this subpart, the term "outside employment or other outside activity" refers to any work, service, or other activity performed by an employee other than in the performance of his official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting services, self-employment, and other work, or services, with or without compensation.

§ 1207.735-302 Policy.

(a) NASA employees are permitted to engage in outside employment or other outside activity that is compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Guidelines for determining compatibility are set forth in § 1207.735-303.

(b) NASA employees are encouraged to participate as private citizens in the affairs of their communities provided that the limitations prescribed below, and otherwise by these regulations, are observed. Among these activities may be the following:

(1) Speaking, writing, editing, and teaching.

(2) Participation in the affairs of charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, and the acceptance of an award for a meritorious public contribution or achievement from any such organization.

(3) Participation in the activities of national, State, and local political parties not proscribed by law. In this connection employees should be particularly aware of the restrictions imposed on their activities by the "Hatch Act" (5 U.S.C. 7324-7327).

§ 1207.735-303 Guidelines and limitations.

Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilites, and hence is prohibited, if:

(a) It would involve the violation of a Federal or State statute, a local ordinance, Executive order, or regulation to which the employee is subject.

(b) It would give rise to a real or apparent conflict of interests situation even though no violation of a specific statutory provision was involved.

(c) It would involve acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interests.

(d) It might bring discredit upon, or reasonably cause unfavorable criticism of, the Government or NASA or lead to relationships which might impair public confidence in the integrity of the Government or NASA.

(e) It would involve work with any contractor or subcontractor which is connected with any work being performed by that entity for NASA or would otherwise involve work for any person or organization which may be in a position to gain advantage in its dealings with the Government through the exercise of the employee's exercise of his official duties.

(f) It would identify NASA or its employee officially with any organization manufacturing, distributing, or advertising a product relating to work conducted by NASA, or would create the false impression that it is an official action of NASA, or represents an official point of view. In any permissible outside employment, care must be taken to insure that names and titles of NASA employees are not used to give the impression that the activity or product is officially endorsed or approved by NASA or is part of NASA activities.

(g) It would involve use of the employee's time during his official working hours.

(h) It would involve use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours.

(i) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair his mental or physical capacity to perform them in an acceptable manner.

(j) It would involve use of information obtained as a result of Government employment which is not freely available to the general public in that it either has not been made available to the general public or would not be made available on request. However, written authorization for the use of nonpublic information may be given when the head of the field or component installation or, at NASA Headquarters, the Associate Administrator for Associate Administrator for Center Operations, as appropriate, determines that such use would be in the public interest.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

§ 1207.735-304 Distinction between official and nonofficial activities.

In applying the provisions of this subpart, particularly with regard to writing, speaking, or editing activities, NASA employees must distinguish between official and nonofficial activities. In connection with writing, speaking or editing, an activity will normally be considered official if:

(a) It is the result of a request addressed to NASA to furnish a speaker, author, or editor or of an invitation addressed to an employee of NASA to perform these activities in his official capacity, rather than as a private individual; or

(b) The activity is performed in conjunction with attendance at a meeting approved under the authority of 5 U.S.C. 4110 (formerly the Government Employees Training Act).

The fact that an activity was prepared for outside of duty hours or was performed after normal duty hours is not determinative of whether it is official or nonofficial.

§ 1207.735-305 Compensation, honorariums, travel expenses.

(a) An employee may accept compensation or an honorarium for permissible outside employment or other outside activity which is nonofficial in character unless otherwise prohibited by this subpart.

(b)(1) Except as provided in § 1207.735-201(d)(9) and in paragraph (b)(2) of this section, travel expenses will be borne by the Government when official employment activities of NASA employees are involved, including attendance at meetings of nongovernmental organizations. Conversely, when nonofficial outside employment activities are involved, appropriated funds will not be utilized for travel or subsistence.

(2) Contributions and awards incident to training in non-Government facilities and travel, subsistence, and other expenses incident to attendance at meetings may be accepted by NASA employees, provided that such contributions, awards, and payments are made by non-profit organizations pursuant to 5 U.S.C. 4111 (formerly the Government Employees Training Act), and that the employee has obtained specific written authorization to accept the contribution or award.

(3) No employee shall accept (i) any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and spouse or aide, and excluding amounts paid or incurred for agents' fees or commission) for any

appearance, speech, or article, or (ii) honorariums aggregating more than $25,000 in any calendar year (Pub. L. 94-283, section 328). The provisions of this paragraph apply whether the appearance, speech or article is approved as permissible outside employment under this subpart, or pertains to the private interests of the employee.

[41 FR 2633, Jan. 19, 1976, as amended at 41 FR 31526, July 29, 1976; 41 FR 35479, Aug. 23, 1976]

§ 1207.735-306 [Reserved]

§ 1207.735-307 Special conditions applicable to writing and editing.

(a) Subject to the limitations set forth in § 1207.735-303, NASA employees may serve as editors, as editorial consultants, or on editorial boards, and may contribute articles to publications issued by nonprofit organizations or by profit organizations involved in trade or news press publishing.

(b) Publication associated with organizations in the nonprofit category are those such as the National Geographic Society.

(c) The profit category of publications includes textbooks, hand books, magazines, journals, and newspapers. Editing activities for profit organizations should be carefully appraised. Under no circumstances should the activity involve approval or disapproval of advertising.

(d) Writing and editing, with or without pay, which pertain to the private interests of employees regarding hobbies, sports, or cultural activities are permitted unless there are actual or apparent conflicts with their officially assigned duties.

§ 1207.735-308 Administrative approval.

The provisions of this section will be observed with respect to all outside employment or other outside activity. Each employee must be alert to identify and to avoid any situation that would involve him is prohibited activity. Aside from avoiding prohibited outside employment or other outside activity, each employee must also obtain administrative approval in accordance with Appendix A to this subpart before engaging in outside employment of the following types:

(a) Writing or editing except those activities set out in § 1207.735-307(d).

(b) Speaking engagements except where the subject matter is unrelated to the subject matter of the employee's official duties.

(c) Teaching and lecturing.

(d) Regular self-employment.

(e) Consulting services.

(f) Holding State or local public office.

(g) Outside employment or other outside activity involving a NASA contractor or subcontractor.

(h) Any other outside work concerning the propriety of which an employee is uncertain.

Prior administrative approval may be required for additional types of outside employment where, because of special considerations, such a requirement is considered desirable for the protection of employees or NASA.

§ 1207.735-309 Related statutory provisions.

Several criminal statutory provisions restrict certain types of outside activities on the part of employees, as follows:

(a) 18 U.S.C. 203 imposes criminal penalties upon an employee who, other than in the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another in relation to any proceeding, application, request for a ruling or other determination, contract, claim controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, courtmartial, officer, or any civil, military, or naval commission.

(b)(1) 19 U.S.C. 205 imposes criminal penalties upon an employee who other than in the proper discharge of his official duties—

(i) Acts as agent or attorney for prosecuting any claim against the United States or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(ii) Acts as agent or attorney for anyone before any department, agency, court, courtmartial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest.

(2) Exceptions to the foregoing prohibitions are as follows:

(i) If not inconsistent with the faithful performance of his duties, an employee may act, without compensation, as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

(ii) An employee may act, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

(c)(1) Under 18 U.S.C. 209 an employee is prohibited from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the Government, from any source other than the Government of the United States except as may be contributed out of the treasury of any State, county or muncipality, or except as may be paid under the terms of 5 U.S.C. 4101 to 4118 (formerly the Government Employees Training Act).

(2) Exceptions to the prohibitions of 18 U.S.C. 209 are also made for those employees continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer. However, such financial interests may still violate 18 U.S.C. 208 unless waived. (See Subpart D, Appendix B, paragraph 4.)

(d) Pub. L. 94-283, section 328 provides:

> No person while an elected or appointed officer or employee of any branch of the Federal Government shall accept—
>
> (1) Any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article; or
>
> (2) Honorariums (not prohibited by paragraph (d)(1) of this section) aggregating more than $25,000 in any calendar year.

Violation of this section can result in a substantial civil penalty amounting to $5,000, $10,000, or higher, depending on the circumstances.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

APPENDIX A—PROCEDURES FOR PERMISSION TO ENGAGE IN OUTSIDE EMPLOYMENT OR OTHER OUTSIDE ACTIVITY (see § 1207.735-308)

1. *Form and content of request.* A request for administrative approval of outside employment or other outside activity shall be in writing and show:

a. Employee's name and occupational title.

b. Nature of the activity; full description of specific duties or services to be performed.

c. Name and business of person or organization for which the work will be done. (In the case of self-employment in a professional capacity serving a large number of individuals, instead of listing each client, the type of services to be rendered and estimate of the total number of clients anticipated during the next 6 months will be indicated.)

d. Estimated total time that will be devoted to the activity. (If on a continuing basis, the estimated time per year; if not, the anticipated ending date.)

e. Whether service can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that will be required.

2. *Routing.* The request for approval will be submitted (in duplicate) to the appropriate Official-in-Charge of the Headquarters Office or to the head of the field or component installation or to the persons designat-

ed to act for them. Employees will be notified in writing of the actions taken on their requests. All approved requests (or copies of such requests) and two copies of the notification of the approval action will be maintained in the local Personnel Office as follows:

a. A special file on outside employment, separated by title of types of employment.

b. A copy in the personnel folder of the employee concerned.

3. *Keeping record up to date.* If there is a change in the nature or scope of the duties or services performed or the nature of his employer's business, the employee will submit a revised request for approval promptly. If the outside work is discontinued sooner than anticipated (not merely suspended temporarily), he will notify the officer who approved the request.

4. *Enforcement.* Failure to request administrative approval for outside employment or other outside activity for which approval is required is ground for disciplinary action.

5. *Confidentiality of requests.* All requests for approval will be treated as confidential and made available only to specifically authorized persons.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

Subpart D—Financial Interests and Investments

§ 1207.735-400 Scope of subpart.

This subpart prescribes policies and procedures for the avoidance of conflicting financial interests in connection with an employee's Government position or in the discharge of his official responsibilities, and sets out the requirements for reporting financial interests and outside employment.

§ 1207.735-401 General

(a) Employees are subject to two types of controls in connection with apparent or actual conflicting financial interests. One is a criminal statute, 18 U.S.C. 208, which by its terms prohibits an employee's participation in certain official activities where he has a conflicting personal financial interest. The other is a requirement under Executive Order 11222 and Civil Service Commission regulations that employees occupying certain Government positions must report all personal financial interests and outside employment by filing a statement of employment and financial interests. The statute and the statement of employment and financial interests have the common objective of deterring the occurrence of conflicting financial interest situations, one by sanctions and the other by disclosure, but where the statute prohibits and punishes, the statement of employment and financial interests is intended to serve as an aid to the employee and those who review his statement in the avoidance of the conflicting situation through advice and counseling.

(b) The statement of employment and financial interests (NASA Form 1270) required under this subpart is in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation, unless he obtains a waiver under procedures set out in this subpart.

(c) Notwithstanding the requirement under this subpart for filing a statement of employment and financial interests, and an annual supplement thereto an employee shall avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of 18 U.S.C. 208(a) or of this part.

§ 1207.735-402 Statutory prohibitions against acts affecting a personal financial interest.

(a) The provisions of 18 U.S.C. 208(a) prohibit any employee from participating personally and substantially in the course of his Government duties in any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in relation to which matter, to his knowledge, the following persons or organizations have a financial interest:

(1) The employee, or his spouse, minor child, or partners;

(2) A business or nonprofit organization in which the employee is serving

as an officer, director, trustee, partner, or employee; or

(3) A person or business or nonprofit organization with whom or with which the employee is negotiating, or has any arrangement with, concerning prospective employment.

(b) The prohibitions in paragraph (a) of this section may be waived under certain circumstances which are set out in § 1207.735-403.

(c) Illustrative of the types of matters in which NASA employees commonly participate and which may fall within the prohibitions described in paragraph (a) of this section are the following:

(1) The negotiation, administration, or auditing of contracts or agreements;

(2) The selection or approval of contractors or known subcontractors under a NASA prime contract;

(3) The technical monitoring or direction of work under a contract;

(4) Participation on boards or committees of the type listed in § 1207.735-404(a)(3); or

(5) Project monitoring.

(d) Unless a waiver is granted pursuant to § 1207.735-403, no NASA employee or civilian or military personnel of other Government agencies regularly detailed to NASA will participate personally and substantially in the course of his Government duties in any specific matter of a type listed in paragraph (c) of this section, or in any other matter of a type referred to in paragraph (a) of this section if, to his knowledge, any of the persons or organizations identified in paragraph (a) of this section have a financial interest relating to that specific matter.

§ 1207.735–403 Waiver of statutory prohibition.

(a) The prohibition of 18 U.S.C. 208(a) may be waived in connection with a specific matter of the type which comes under the statute if the employee makes a full disclosure in writing of the nature of the matter involved and of the financial interest relating thereto and receives, in advance of his participation in such matter, a written determination that such financial interest is not so substantial as to affect the integrity of his services and, therefore, that the employee may participate personally and substantially in that matter. The procedures set forth in Appendix A to this subpart will be followed in connection with granting a waiver as described in this section.

(b) The prohibition of 18 U.S.C. 208(a) also may be waived by general regulation applicable to all NASA employees so as to permit an employee (including civilian and military personnel of other Government agencies regularly detailed to NASA) to participate personally and substantially in a specific matter, notwithstanding the existence of a financial interest relating to that matter, where it has been determined that such a financial interest is too remote or to inconsequential to affect the integrity of the employee's services in any matter in which he may act in his governmental capacity. Such a determination has been made by the Administrator with respect to the categories of financial interests set forth in Appendix B to this subpart.

§ 1207.735–404 Statement of employment and financial interests.

(a) The following criteria define the categories and types of employees who will file a statement of employment and financial interests, containing the kind of information required by the Civil Service Commission, on NASA Form 1270:

(1) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code, except the Administrator, who is subject to separate reporting requirements under section 401 of Executive Order 11222.

(2) Employees classified at the GS-13 level and above, under 5 U.S.C. 5332 or at comparable pay levels under other authority, unless otherwise exempted pursuant to paragraph (b) of this section, whose duties and responsibilities require the exercise of judgment in making a Government decision or in taking Government action in regard to:

(i) Contracting or procurement, including the evaluation or selection of contractors; the negotiation, approval, or award of contracts; the supervision of activities performed by contractors, including the administration, monitoring, audit, and inspection of contractors and contract activities; and the initiation or approval of requests to procure supplies, equipment, or services, other than those common items available from NASA or GSA inventories;

(ii) Administering or monitoring grants or subsidies, including grants to educational institutions and other non-Federal organizations;

(iii) Auditing financial transactions;

(iv) Using or disposing of excess or surplus property;

(v) Establishing or enforcing safety standards and procedures.

(3) All employees, regardless of grade, serving as members of the following Boards or Committees:

(i) Source Evaluation Boards or Committees;

(ii) Inventions and Contribution Boards;

(iii) Contract Adjustment Board;

(iv) Board of Contract Appeals;

(v) Architect-Engineer Selection Boards; and

(vi) Site Selection Boards.

(4) Employees classified at the GS-13 level and above under 5 U.S.C. 5332, or at comparable pay levels under other authority, and who are identified by the head of a field or component installation or, at Headquarters, by the Assistant Administrator for Personnel Programs, as holding positions requiring the incumbent thereof to exercise judgment in making Government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise.

(5) Employees classified below the GS-13 level under 5 U.S.C. 5332, or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of § 1207.735-404(a)(2) or § 1207.735-404(a)(4), providing the Civil Service Commission has approved the determination that the incumbents of such positions should be required to file statements of employment and financial interests in order to protect the integrity of the Government and to avoid the employee's involvement in a possible conflict of interests situation.

(b) An employee described in paragraph (a)(2) of this section may be exempted from the requirement for filing a statement of employment and financial interests when the head of the field or component installation involved or, at Headquarters, the Assistant Administrator for Personnel Programs, determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of his becoming involved in a conflict of interests is remote.

(c) Procedures for filing statements of employment and financial interests are contained in Appendix C to this subpart.

(d) The following procedures will be followed with regard to the maintenance of statements of employment and financial interests. Each head of a field or component installation, and, at Headquarters, the Assistant Administrator for Personnel Programs, will maintain, on a current basis, a master list of employees required to file statements under this subpart. It will be this official's responsibility to determine that the list includes all those employees following within the criteria for reporting set forth in this subpart and that the requirement for filing statements is fully carried out on a timely basis. In the event of any question regarding the interpretation of these criteria, the official will consult the Agency Counselor of NASA directly.

(e) Any employee who considers that his position does not come within the criteria for reporting set forth in this subpart, and therefore that he should not be required to file a statement, may request a review, through the NASA grievance procedure, of the determination that his position does come within such criteria. The NASA grievance procedure is set forth in the Federal Personnel Manual, Chapter 771, and the NASA Supplement thereto.

(f) An employee who refuses to file a statement for reasons other than that his position does not come within the criteria for reporting set forth in this subpart, or who refuses to file after the determination that his position does come within such criteria has been reviewed, as provided in

§ 1207.353-404(e), and has been approved, will be subject to appropriate disciplinary action.

(g) Employee statements comprise a System of Records of the Civil Service Commission (CSC) under the Privacy Act of 1974. The General Counsel of NASA has been designated as the System Manager in the CSC System Notice. Statements forwarded to the appropriate personnel office in accordance with this part will be in sealed envelopes. Statements will be retained in a special locked cabinet or safe to which only the designated employees will have access. The head of the local personnel office will designate within his office one or more key employees who are authorized to open and examine statements for completeness. When a form is complete, it shall be promptly forwarded to a Deputy Counselor (Legal) for review pursuant to Subpart E. Statements will be retained in a special locked cabinet or safe to which only the designated employees will have access. Transmission of statements for legal review will be in a sealed envelope bearing the inscriptions "To Be Opened Only By (bearing the name of the individual authorized to review such statements)" and "Subject to the Privacy Act." Within each NASA legal office, procedures for limiting access to statements and for their safekeeping, as rigorous as those set forth for personnel offices, will be maintained. There will be no discussion or disclosure of the details of statements of employment and financial interests except as necessary to carry out the provisions of Subpart E. In accordance with the Privacy Act, information from a statement shall not be disclosed outside of NASA except as the Administrator or the Civil Service Commission shall determine for good cause shown. Within NASA, except for the examination and review process set forth in this paragraph, access to the employee statements will be permitted only upon the express approval of the General Counsel.

(h) This subpart does not require an employee to include in a statement of employment and financial interests, or supplementary statement, any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise. For the purpose of this subpart, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's financial interest statement.

(i) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a), as set forth in Appendix B to this subpart, may be omitted from the statement of employment and financial interests, except that, notwithstanding the exemption set forth in paragraph 1a of Appendix B, the ownership of securities in any amount in a company doing business with NASA will be disclosed if the employee's duties and responsibilities require the exercise of judgment in making a Government decision or in taking Government action in relation to that company.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

§ 1207.735-405 Executive personnel financial disclosure report.

(a) *Background.* The Ethics in Government Act of 1978 (Pub. L. 95-521) prescribes a public financial disclosure reporting requirement for certain officers and employees. The requirements and procedures are set forth in detail in the Act as well as in the implementing regulations of the Office of Government Ethics (5 CFR Part 734). This section will not reiterate these detailed requirements nor the instructions for filing that are contained on the Executive Personnel Financial Disclosure Report (SF 278).

(b) *Employees required to file.* Following are NASA employees required to file the Executive Personnel Financial Disclosure Report.

(1) Presidential nominees to positions requiring the advice and consent of the Senate.

(2) Officers and employees (including Special Government Employees) who have served in their positions for 61 days or more during the preceding calendar year whose positions are classified or paid at GS-16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the rate for GS-16. This category includes members of the Senior Executive Service.

(3) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16.

(4) Administrative law judges.

(5) Employees in the excepted service in positions which are of a confidential or policymaking character unless their positions have been excluded by the Director of the Office of Government Ethics.

(6) The Designated Agency Ethics Official.

(c) *Time of filing*—(1) *Initial appointment.* Within 5 days after transmittal by the President to the Senate of the nomination to a position described in paragraph (b)(1) of this section or within 30 days after first assuming a position described in paragraphs (b) (2), (3), (4), (5), or (6) of this section, an Executive Personnel Financial Disclosure Report (SF 278) must be filed.

(2) *Incumbents.* An Executive Personnel Financial Disclosure Report must be filed no later than May 15 annually by incumbents of any of the positions listed in paragraph (b) of this section. In certain cases an extension of up to 45 days for filing may be permitted by the Designated Agency Ethics Official. The Director of the Office of Government Ethics may grant an additional 45-day extension, for good cause shown.

(3) *Terminations.* The individual shall file an Executive Personnel Financial Disclosure Report no later than 30 days after an incumbent of a position listed in paragraph (b) of this section terminates that position.

(d) *Place of filing.* All reports required to be filed by this section by Headquarters Employees, Directors, Deputy Directors and Chief Counsels of field installations shall be submitted on or before the due date to the Director, Office of Development, Personnel Programs Division, Code NPD, NASA Headquarters. Other field installation personnel required to file reports by this section shall submit such reports on or before the due date to the Field Installation Director of Personnel.

(e) *Review and retention of reports.* All reports required to be filed with the Director, Office of Development, Personnel Programs Division, Code NPD, NASA Headquarters, will be reviewed by the Designated or Alternate Agency Ethics Counselor, Office of the General Counsel. Reports required to be filed by field installation personnel with the Field Installation Director of Personnel will be reviewed by the Field Installation Chief Counsel. All reports required to be filed by this section will be sent, after review, to the Director, Office of Development, Personnel Programs Division, Code NPD, NASA Headquarters, for retention. The reports will be available to the public.

(f) *Where to seek help.* To seek assistance in completing the Executive Personnel Financial Disclosure Report, contact the Field Installation Chief Counsel or the Assistant General Counsel for General Law at Headquarters.

(g) *Failure to submit report.* Falsification of or knowing or willful failure to file or report information required to be filed by section 202 of the Ethics in Government Act may subject the individual to a civil penalty and to disciplinary action. Also, knowing or willful falsification of information under that section may subject the individual to criminal prosecution under 28 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

[50 FR 3888, Jan. 29, 1985]

APPENDIX A—WAIVER PROCEDURES (see § 1207.735–203(a))

1. Employees appointed under authority of section 203(c)(2)(A) ("NASA Excepted Positions") or section 203(b)(10) ("Alien Scientists") of the National Aeronautics and

Space Act of 1958 (42 U.S.C. 2473(C)(2)(A) and 2473(b)(10)); or under 5 U.S.C. 3164.

a. The employee will address a written request for a waiver to the Administrator. The request will describe the specific matter involved, the nature and extent of the employee's participation therein, and the exact nature and amount of the financial interest relating to the specific matter.

b. The employee, if stationed at NASA Headquarters, will forward his request to the Administrator via the Official-in-Charge of the Headquarters Office in which the employee is located. The official will transmit the request with his comments and recommendations on the proposed waiver to the Administrator.

c. The employee, if stationed at a NASA field or component installation, will forward his request to the Administrator via the Head of the installation, who will transmit the request, with his comments and recommendations on the proposed waiver, to the Administrator.

d. The determination required by the statute will be made only by the Administrator or Deputy Administrator in the case of employees holding appointments under the statutes cited in paragraph 1 of this appendix.

2. *All other employees*—a. *Headquarters*. (1) All other NASA employees (including civilian and military personnel of other Government agencies regularly detailed to NASA) who are stationed at NASA Headquarters will forward their requests for a waiver to the Official-in-Charge of the Headquarters Office in which the employee is located. The waiver request will contain the same information as required in paragraph 1a of this appendix. The official will transmit the request with his comments and recommendations on the proposed waiver to the Associate Administrator for Center Operations.

(2) The Associate Administrator for Center Operations is authorized to make the determination required by the Statute. This authority may not be redelegated.

b. *Field and component installations*. (1) All other NASA employees (including civilian and military personnel of other Government agencies regularly detailed to NASA) who are stationed at a field or component installation will forward their requests for a waiver to the head of the installation, via the head of the major organizational component in which the employee is located. The waiver request will contain the same information as required in paragraph 1a of this appendix. The head of the major organizational component will transmit the request to the head of the installation with his comments and recommendations on the proposed waiver.

(2) The heads of NASA field and component installations, and the deputy or associate heads of such installations, are authorized to make the determination required by the statute. This authority may not be redelegated. An information copy of each such determination or of the disapproval of the employee's request will be forwarded to the Associate Administrator for Center Operations, NASA Headquarters.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

APPENDIX B—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITION OF 18 U.S.C. 208(a) (see § 1207.735-403(b))

Pursuant to the authority contained in 18 U.S.C. 208(b)(2), it has been determined that the categories of financial interests hereinafter described are, to the extent indicated, exempted from the application of the prohibition of 18 U.S.C. 208(a), because they are too remote or too inconsequential to affect the integrity of a NASA employee's services in any matter in which he may act in his governmental capacity. Therefore, the provisions of 18 U.S.C. 208(a) do not preclude the participation by a NASA employee, including a special Government employee, in matters of a type covered by the prohibition of section 208(a) where the financial interest involved has been exempted hereunder.

1. The following exemptions apply to financial interests which are held directly by a NASA employee, including a special Government employee, or by his spouse or minor child, whether jointly or individually, or by a NASA employee and his partner or partners as joint assets of the partnership.

a. Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed $5,000, and provided such stocks and securities are listed for trading on the New York or the American Stock Exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities.

b. Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

c. Ownership of shares in a mutual fund or regulated investment company regardless of the value of such interest. This exemption extends also to any financial interests that the mutual fund or investment company may have in other business entities.

2. If a NASA employee, including a special Government employee, or his spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraph 1a above for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraph 1 b and c above for the direct ownership of such bonds or shares.

3. If a NASA employee, including a special Government employee, is an officer, director, trustee, or employee of an educational institution, or if he is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interests that the institution may have in the matter through its holdings of securities issued by business entities will be exempt, provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

4. If a NASA employee, including a special Government employee, has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which he is a former employee, his financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. This exemption extends also to any financial interests that the organization may have in other business activities.

APPENDIX C—PROCEDURES FOR FILING STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS (see § 1207.735-404)

1. *Time and place.* a. Each employee required to file a statement under Subpart D will obtain NASA Form 1270 from the local personnel office and after completing the form will submit it to the local personnel officer as follows:

(a) Thirty days after entrance on duty.

(b) Ten days after his position is specifically identified as one requiring the incumbent thereof to file a financial statement under § 1207.735-404(a)(4), or after the Civil Service Commission has approved the determination that he should file under § 1207.735-404(a)(5).

(c) After selection and at least 5 days before service on the boards or committees listed in § 1207.735-404(a)(3).

2. Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement of interest held as of June 30 each year. If no changes or additions have occurred since the previous statement, a negative report to that effect is required. All supplementary statements, including negative reports, will be filed on NASA Form 1270.

3. *Financial interests of employee's relatives.* For purposes of this reporting requirement, the financial interests of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee and must be reported. "Members of an employee's immediate household" means those blood relations who are residents of the employee's household.

4. *Information not known by employees.* If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf. The employee concerned should avoid gaining knowledge about such interests in order to prevent the possibility of invoking 18 U.S.C. 208.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31526, July 29, 1976]

Subpart E—Advisory Service and Enforcement

§ 1207.735-500 Scope of subpart.

This subpart (a) establishes an advisory service for employees for the purpose of furnishing interpretations and advising on questions arising under this part, and (b) prescribes the types of remedial and disciplinary actions which may be taken to enforce the requirements of Subparts A, B, C, D, and E of this part.

§ 1207.735-501 Use of advisory service.

When questions or problems arise concerning matters covered by this part NASA employees will seek the advice and consultative services of the counselors designated in § 1207.735-502.

§ 1207.735-502 Designation of counselors and statement of functions.

(a) The General Counsel is designated as the Agency Counselor. His functions consist of the following:

(1) Act as the principal point of contact with the Civil Service Commission on matters covered by this part; and

(2) Provide general guidance to Deputy Counselors for the purpose of achieving uniform interpretation of this part.

(b) Deputy Counselors. (1) The following officials are designated as Deputy Counselors under this subpart:

(i) NASA Headquarters—

(*a*) Assistant Administrator for Personnel Programs;

(*b*) Director of Personnel, NASA;

(*c*) Deputy General Counsel;

(*d*) An Assistant General Counsel, as designated by the Agency Counselor; and

(*e*) Director, Headquarters Office of Personnel.

(ii) NASA field and component installations—

(*a*) The Chief Counsel; and

(*b*) The Personnel Office.

(2) Functions of the Deputy Counselors;

(i) The Assistant Administrator for Personnel Program, NASA, will oversee the activities of the Deputy Counselors (Personnel) under the general guidance of the Agency Counselor.

(ii) Deputy Counselors (Legal) will be responsible for—

(*a*) Reviewing statements of employment and financial interests, filed pursuant to the provisions of Subpart D; and

(*b*) Advising the Deputy Counselors (Personnel) on questions regarding the interpretation and application of statutes, Executive Orders, Court Decisions, the decisions of the Comptroller General, and other legal matters arising under this part.

(iii) Deputy Counselors (Personnel) will be responsible for—

(*a*) Counseling employees on all other problems and questions arising under this part which are not specifically within the responsibility of the Deputy Counselors (Legal); and

(*b*) Consulting, as necessary, with the Deputy Counselors (Legal) on questions and problems arising under this part.

(iv) Deputy Counselors may carry out their responsibilities through designated subordinates. The Deputy Counselors, however, shall retain ultimate responsibility for the functions assigned to them under this § 1207.735-502.

[32 FR 14648, Oct. 21, 1967, as amended at 41 FR 31527, July 29, 1976]

§ 1207.735-503 Review, enforcement, reporting, and investigating.

(a) Each statement, and supplementary statement, of employment and financial interests submitted under Subpart D shall be reviewed by the appropriate Deputy Counselor (Legal). If that review discloses a conflict of interest or apparent conflict of interest the employee shall be given an opportunity to explain the conflict or apparent conflict, and every effort shall be made to resolve the matter. If the matter cannot be resolved at a lower level, it shall be reported to the Agency Counselor. If the Agency Counselor decides that remedial action is necessary, he shall take such action immediately to end the conflict or apparent conflict of interest.

(b) NASA employees should consult with their Deputy Counselors with regard to any questions concerning this part. Resolution of problems disclosed by such consultations will be accomplished at the lowest possible supervisory level in the agency through counseling or by taking administrative action to eliminate real or apparent conflicts of interest. The services of the NASA Inspection Division will be requested by the Deputy Counselor, when necessary, to conduct investigations to ascertain all relevant facts.

(c) Any NASA employee receiving an allegation of a possible violation of the provisions of this part by any other NASA employee (including civilian and military personnel of other Government agencies, regularly detailed to NASA) shall, unless it is based on mere gossip or rumor, promptly report it directly to the Director of Inspections or his local representative, as provided for in NASA Management Instruction 1960.1.

(d) A violation of the regulations contained in this part may be cause for appropriate disciplinary action. All disciplinary or remedial action taken hereunder will be in conformance with applicable laws, Executive Orders, Civil Service Commission regulations and NASA regulations. Appropriate disciplinary or remedial action includes, but is not limited to, divestiture by the employee of his conflicting interest, disqualification for particular assignments, reassignment, or disciplinary action.

(e) The employee concerned will have a reasonable opportunity during any investigation and at all levels of consideration of his problem to present in person and through documents his position on the matter.

Subpart F—Standards of Conduct for Special Government Employees

§ 1207.735-600 Scope of subpart.

This subpart:

(a) Provides guidance with respect to the application of the conflict of interests statutes to special Government employees (as defined in § 1207.735-601); it is of particular applicability to consultants and experts.

(b) Sets forth the standards of ethical conduct which, under Presidential order and regulations of the Civil Service Commission, special Government employees are expected to observe.

§ 1207.735-601 Definitions.

(a) *Special Government employee.* A special Government employee is defined, under 18 U.S.C. 202, and for the purposes of this subpart, as an officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties, either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days (see § 1207.735-602).

(b) *Particular matter.* The term "particular matter" is not defined in the statutes, but is used in context as follows:

> "* * * any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter."

(c) *Personally and substantially.* The term "personally and substantially" is not defined in the statutes, but is used in context as follows: "* * * personally and substantially, * * * through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise * * *"

(d) *Official responsibility.* The term "official responsibility" is defined by statute to mean the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action." NASA consultants or experts will not normally exercise official responsibility in connection with any matters.

§ 1207.735-602 Applicability.

(a) This subject is applicable to all NASA employees who are classified as special Government employees. It is of particular applicability to NASA consultants and experts, who normally fall within the definition of the term "special Government employee."

(b) To the extent that the conflict of interests statutes apply to a special Government employee, they apply to his activities on all days during the period of his NASA appointment, beginning with the date on which he takes an oath of office as a Government employee, whether he works on a full-time or intermittent basis. Similarly, the ethical standards prescribed in this subpart apply to the special Government employee during the full period of his appointment as a NASA employee, and not merely on the days on which he performs services as an employee.

(c) NASA employees, including consultants and experts, who are appointed to serve for more than 130 days during a period of 365 consecutive days are not subject to this subpart, even though they may in fact work 130 days or less, but are subject to Subparts A through E, prescribing standards of conduct for regular Government employees.

§ 1207.735-603 Application of conflict of interest statutes.

The so-called "conflict-of-interests" statutes (18 U.S.C. 203, 205, 207, 208, and 209) are criminal statutes which provide for fines or imprisonment if they are violated. Their full text is set forth in Appendix A to this subpart. In summary, they apply to the special Government employee as follows:

(a) 18 U.S.C. 203 and 205 apply to the special Government employee in his capacity as a private individual while serving also as a Government employee. They provide that the special Government employee may not, except in the discharge of his Government duties:

(1) Represent anyone else before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and in which he has at any time participated "personally and substantially" (§ 1207.601(c)) either as a special or regular Government employee.

(2) Represent anyone else before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties which is pending within NASA, if he has served as a NASA employee for more than 60 days during the preceding 365 days. The special Government employee is bound by this restraint whether or not he has acted "personally and substantially" (§ 1207.735-601(c)) in relation to the "particular matter."

There are four exceptions from the application of one or both of the foregoing prohibitions, which are specified in the full text of section 205 (Appendix A of this subpart).

(b) 18 U.S.C. 207 applies to the special Government employee in his capacity as a private individual, after he has terminated his service as a Government employee. It provides that the former employee may not:

(1) At any time after his Government employment has ended, represent anyone else before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated "personally and substantially" (§ 1207.735-601(c)), either as a special or regular Government employee.

(2) Within 1 year after his Government employment has ended, appear personally before a court or any Government agency in relation to a "particular matter" (§ 1207.735-601(b)) involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and which was under his "official responsibility" (§ 1207.735-601(d)) as a Government employee within a period of 1 year prior to the termination of such responsibility. The prohibition applies whether or not the special Government employee participated "personally and substantially" (§ 1207.735-601(c)) in the "particular matter" (§ 1207.735-601(b)) while he was employed.

(c) 18 U.S.C. 207(c) applies to the partner of a special Government employee. It provides that during the period of the special Government employee's appointment, his partner may not act as agent or attorney for anyone else in relation to a "particular matter" (§ 1207.735-601(b)) in which the United States is a party or has a direct and substantial interest and in which the employee is participating or or has participated "personally and substantially" (§ 1207.735-601(c)) as a special Government employee, or which is under the employee's "official responsibility" (§ 1207.735-601(d)).

(d)(1) 18 U.S.C. 208 applies to the special Government employee when he is acting in his capacity as a Government employee. It provides that the special Government employee may not, in his governmental capacity, participate "personally and substantially" (§ 1207.735-601(c)) in any "particular matter" (§ 1207.735-601(b)) in relation to which matter, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

(2) The statute also provides for two types of exemptions to be granted from the foregoing prohibition, so as to permit a special Government employee to participate "personally and substantially" (§ 1207.735-601(c)) in a "particular matter" (§ 1207.735-601(b)), notwithstanding the existence of a conflicting financial interest which he holds directly or that is imputed to him. These exemptions are:

(i) In connection with specific matters, if the special Government employee's financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him, an ad hoc exemption from the application of the statutory prohibition may be granted, in advance of his acting in relation to that matter, by the NASA official responsible for his appointment as a special Government employee.

(ii) A general exemption, applicable to all NASA employees including special Government employees, of certain financial interest which have been determined to be too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may be called upon to participate, may also be granted. The categories of financial interests which have been exempted by the Administrator under this general authority are set forth in Appendix B to this subpart.

(c) 18 U.S.C. 209, the fifth "conflict-of-interests" statute, does not apply to special Government employees.

§ 1207.735-604 Other statutes.

(a) There are many other criminal statutes which are especially aimed at regulating the conduct of Government employees, and which therefore apply to special Government employees. Two such statutes which are closely related to the conflict-of-interests statutes are:

(1) *Bribery.* 18 U.S.C. 201 prohibits a Government employee from soliciting, receiving or agreeing to receive, directly or indirectly, anything of value for himself or others in connection with the performance of his official duties, or in return for committing or aiding in the commission of a fraud on the United States.

(2) *Disclosure of private or proprietary information.* 18 U.S.C. 1905 prohibits a Government employee from disclosing, in any manner and to any extent not authorized by law, any information coming to him in the course of his employment or official duties which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, business entity, or association.

(b) Regulations of the Civil Service Commission require that certain other statutes pertaining to the ethical and other conduct of special Government employees be brought to the attention of all such employees. These are listed in Appendix C to this subpart.

§ 1207.735-605 Standards of ethical conduct.

Under Presidential order and regulations of the Civil Service Commission, certain additional standards of ethical conduct have been prescribed for all Government employees. Among these the following are applicable to special Government employees:

(a) *Use of Government employment.* A special Government employee may not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) *Use of inside information.* A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part, or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business or financial ties. In this context, "Inside information" means information obtained as a result of his Government employment which has not been made available to the general public or would not be made available on request. However, nonpublic information may be used upon a written determination made by the Administrator that such use would be in the public interest.

(c) *Avoidance of actions which may appear coercive.* A special Government employee should not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

(d) *Acceptance of gifts, entertainment or favors.* (1) Except as provided in paragraph (d)(2) of this section, a special Government employee should not solicit or receive from a person, organization or group having business with NASA, any gift, gratuity, entertainment (including meals), favors, loan, or other things of monetary value, for himself or for another person, particularly one with whom he has family, business, or financial ties. This rule does not apply if the special Government employee is unaware of such business.

(2) The following are exceptions to the general rule set forth in paragraph (d)(1) of this section:

(i) Receipt of salary, bonuses, or other compensation or emoluments from his non-Government employer or employers.

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting.

(iii) Acceptance of modest entertainment, such as a meal or refreshments, in connection with attendance at widely attended gatherings sponsored by industrial, technical, or professional organizations; or in connection with attendance at public ceremonies or similar activities financed by nongovernmental sources where the special Government employee's participation on behalf of NASA is the result of an invitation addressed to him in his official capacity and approved as a part of his official duties, and the entertainment accepted is related to, and in keeping with, his official participation.

(iv) Acceptance of gifts, favors or entertainment, where there is an obvious family or personal relationship between the employee, or between his spouse, children or parents, and the donor, and where the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor for the gift, favor, or entertainment.

(v) Acceptance of loans from banks or other financial institutions on customary terms, to finance proper and usual activities of employees, such as home mortgage loans.

(vi) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value.

(vii) Acceptance of incidental transportation in kind from a private organization, when it is furnished in connection with the performance of the special Government employee's official duties, and provided it is of a type customarily provided by the private organization.

(e) A special Government employee is not authorized to accept a gift, decoration, or other thing from a foreign government, unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342 (see NASA Management Instruction 1030.1A).

§ 1207.735-606 Statement of employment and financial interests.

(a) Under Presidential order and regulations of the Civil Service Commission, each special Government employee is required to submit a statement of his employment and financial interests at the time of his initial appointment, except to the extent that such requirement has been waived by the Administrator, as specified in paragraph (g) of this section.

(b) The purpose of the statement of employment and financial interests is to assist the employee, and those who review his statement, in avoiding situations where a conflicting financial interest might exist. The statement will be treated by NASA as private information of the employee, and will be held in confidence. It will be reviewed only by those NASA employees who have been designated by the Administrator to make such a review, and there will be no discussion or disclosure of the details of the information furnished except as necessary to carry out the provisions of this subpart. Information contained in the statement shall not be disclosed outside NASA except as authorized by the Administrator or the Civil Service Commission for good cause shown.

(c) The submission of a statement of employment and financial interests is not intended to relieve the employee from complying with other applicable provisions of law, Executive order, or this subpart. In particular, the employee is not thereby permitted to participate in a matter where such participation is prohibited by 18 U.S.C. 208 (see § 1207.735-603(d)).

(d) The statement of employment and financial interests will be submitted at the time the special Government employee is initially appointed by NASA; a new statement will be submitted each time he is reappointed as a NASA special Government employee. The statement will be kept current throughout the period of the employee's service as a NASA special Government employee by the submission of supplementary statements on NASA Form 1271.

(e) The statement of employment and financial interests will be filed on NASA Form 1271 which describes the information to be furnished. The special Government employee is not required to submit any information relating to his connection with, or interest in, a professional society, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. In this connection, however, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed to be "business enterprises." Information relating to such institutions, where relevant, should therefore be included in a special Government employee's statement of employment and financial interests.

(f) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a), as set forth in Appendix B to this subpart, may be omitted from the statement of employment and financial interest.

(g) The Administrator of NASA has determined that the following categories of special Government employees who are not consultants or experts as defined in Chapter 304 of the Federal Personnel Manual will not be required to file statements of employment and financial interests because their duties are of a nature and at such a level of responsibility that the submission of a statement by them is not necessary to protect the integrity of the Government:

(1) Temporary and summer employees below the grade of GS-13.

(2) Employees participating in a management intern or other training program.

§ 1207.735-607 Advisory service.

Special Government employees who desire assistance or advice on interpreting the provisions of this subpart, or on other matters relating to the subject matter covered herein, are invited to consult the Agency Counselor (the NASA General Counsel) at Washington, D.C., or a Deputy Counselor (Legal) at a NASA field installation, or a Deputy Counselor (Personnel) (personnel officer at Headquarters or the field installation).

§ 1207.735-608 Review, enforcement, reporting, and investigation.

(a) Each statement of employment and financial interests submitted under this subpart shall be reviewed by the appropriate Deputy Counselor (Legal). If his review discloses a conflict of interests or apparent conflict of interests the employee shall be given an opportunity to explain the conflict or apparent conflict, and every effort shall be made to resolve the matter. If the matter cannot be resolved at a lower level, it shall be reported to the Agency Counselor. If the Agency Counselor decides that remedial action is necessary, he shall take such action immediately to end the conflict or apparent conflict of interests.

(b) Special Government employees should consult with a Deputy Counselor with regard to any questions concerning this subpart. Resolution of problems disclosed by such consultations will be accomplished at the lowest possible supervisory level in the agency through counseling or by taking administrative action to eliminate a real or apparent conflict of interests. The services of the NASA Inspections Division will be requested by the Deputy Counselor, when necessary, to conduct investigations to ascertain all relevant facts.

(c) A violation of the regulations contained in this subpart may be cause for appropriate disciplinary action. All disciplinary or remedial action taken hereunder will be in conformance with applicable laws, Executive orders, Civil Service Commission regulations and NASA regulations. Appropriate disciplinary or remedial action includes, but is not limited to, divestiture by the employee of his conflicting interest, disqualification for particular assignments, reassignment, or disciplinary action.

(d) The special Government employee concerned will have a reasonable opportunity during any investigation and at all levels of consideration of his problem to present in person and through documents his position on the matter.

APPENDIX A—CONFLICT OF INTERESTS STATUTES (see § 1207.735-603)

18 U.S.C. 203. Compensation to Members of Congress, officers, and others in matters affecting the Government. (a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia—in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided,* That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

18 U.S.C. 205. Activities of officers and employees in claims against and other matters affecting the Government. Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) Acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) Acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and sub stantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States: *Provided*, That the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the FEDERAL REGISTER.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

18 U.S.C. 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) Any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) In which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) Any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest and

(3) As to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government Employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) The department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) In connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) Which is pending before such department or agency or in which such department or agency has a direct and substantial interest—shall be fined not more than $10,000, or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) At a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) On active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section 201 of title 37, United States Code; or

(C) In a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) An elected official of a State or local government, or

(B) Whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the FEDERAL REGISTER, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

18 U.S.C. 208. Acts affecting a personal financial interest. (a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than 2 years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officers or employee, or (2) if, by general rule or regulation published in the FEDERAL REGISTER, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

[32 FR 14648, Oct. 21, 1967, as amended at 50 FR 3888, Jan. 29, 1985]

Appendix B—Categories of Financial Interests Exempted From The Prohibition of 18 U.S.C. 208(a) (see § 1207.735-603(d)(2)(ii))

Pursuant to the authority contained in 18 U.S.C. 208(b)(2), it has been determined that the categories of financial interests hereinafter described are, to the extent indicated, exempted from the application of the prohibition of U.S.C. 208(a) because they are too remote or too inconsequential to affect the integrity of a NASA employee's services in any matter in which he may act in his governmental capacity. Therefore, the provisions of 18 U.S.C. 208(a) do not preclude the participation by a NASA employee, including a special Government employee, in matters of a type covered by the prohibition of section 208(a) where the financial interest involved has been exempted hereunder.

1. The following exemptions apply to financial interests which are held directly by a NASA employee, including a special Government employee, or by his spouse or minor child, whether jointly or individually, or by a NASA employee and his partner or partners as joint assets of the partnership.

a. Ownership of shares of common or preferred stocks, including warrants to purchase such shares, and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation does not exceed $5,000, and provided such stocks and securities are listed for trading on the New York or the American Stock Exchange. This exemption extends also to any financial interests that the corporation whose stocks or other securities are so owned may have in other business entities.

b. Ownership of bonds other than corporate bonds, regardless of the value of such interest. This exemption extends also to any financial interests that the organization whose bonds are so owned may have in other business entities.

c. Ownership of shares of a mutual fund or regulated investment company regardless of the value of such interest. This exemption extends also to any financial interests that the mutual fund or investment company may have in other business entities.

2. If a NASA employee, including a special Government employee, or his spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraph 1a above or the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be exempt to the same extent as provided under paragraph 1b and c above for the direct ownership of such bonds or shares.

3. If a NASA employee, including a special Government employee, is an officer, director, trustee, or employee of an educational institution, or if he is negotiating for, or has an arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interests that the institution may have in the matter through its holdings of securities issued by business entities will be exempt provided the NASA employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

4. If a NASA employee, including a special Government employee, has continued to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization of which he is a former employee, his financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan. The exemption extends also to any financial interests that the organization may have in other business entities.

APPENDIX C—MISCELLANEOUS STATUTORY PROVISIONS (see § 1207.735-604)

1. House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service".

2. Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflict of interests, as appropriate to the employee concerned.

3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

4. The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

5. The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

6. The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of private or proprietary information (18 U.S.C. 1905).

7. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

8. The prohibition against the misuse of a Government motor vehicle or aircraft (31 U.S.C. 638a(c)).

9. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

10. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

11. The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

12. The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

13. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

14. The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public

money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

15. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

16. The prohibitions against proscribed political activities ("The Hatch Act"—5 U.S.C. 7324-7327; 18 U.S.C. 692, 603, 607, and 608).

17. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart G—Administrative Enforcement Procedures for Alleged Violations of 18 U.S.C. 207

AUTHORITY: 18 U.S.C. 207; 5 CFR 737.27.

SOURCE: 45 FR 5298, Jan. 23, 1980, unless otherwise noted.

§ 1207.735-700 Scope of subpart.

This subpart establishes NASA's administrative enforcement procedures for handling allegations of violations of 18 U.S.C. 207, the Federal criminal prohibition against post employment conflicts of interest by former Government employees. It implements 18 U.S.C. 207(j) which requires each agency to establish such procedures, and the guidelines of the Office of Government Ethics (OGE) which appear at 5 CFR 737.27 (44 FR 19987-88; Apr. 3, 1979).

§ 1207.735-701 Policy.

Any allegation that a former NASA employee has violated 18 U.S.C. 207 will be thoroughly and impartially investigated following the guidelines of the OGE and the procedural requirements of this subpart before a final agency decision is reached.

§ 1207.735-702 Procedures for administrative disciplinary hearing.

(a) *Allegations of violations.* Any allegation that a former NASA employee has violated 18 U.S.C. 207 in connection with duties performed while the individual worked for NASA shall be referred to the NASA Insepector General for investigation. The Inspector General shall coordinate, as appropriate, with the Director of the OGE and the Criminal Division of the Department of Justice.

(b) *Initiation of hearing.* When the NASA Inspector General determines after appropriate review that there is reasonable cause to believe that a former NASA employee has violated 18 U.S.C. 207 (a), (b), or (c), or any implementing regulations, the Inspector General shall prepare and issue the notice to the former employee required by 5 CFR 737.27(a)(3).

(c) *Appointment of examiner.* The Associate Deputy Administrator shall appoint an examiner upon issuance of a notice under paragraph (b) of this section. Any duly appointed examiner is hereby delegated authority to conduct an administrative hearing and to make an initial decision under the procedures of this subpart. The examiner shall be impartial and shall not have participated in any manner in the circumstances giving rise to the proceedings or the decision to initiate the proceedings. The examiner shall have a degree in law, be admitted to the bar, and be experienced in the conduct of administrative hearings.

(d) *Time, date and place of hearing.* Upon a request for a hearing by the former employee, the examiner shall schedule a hearing as promptly as possible, with due regard for the former employee's need for adequate time to prepare a defense and expeditious resolution of potentially damaging allegations. The examiner shall observe the procedural requirements of 5 CFR 737.27 and this subpart in conducting the hearing.

(e) *Rights of the former employee.* In connection with a hearing, the former employee shall have the right:

(1) To represent oneself or to be represented by counsel;

(2) To introduce and examine witnesses and to submit evidence;

(3) To confront and cross-examine witnesses;

(4) To present argument;

(5) To request a transcript or recording of the proceedings.

(f) *Burden of proof.* The agency shall have the burden of proof and must establish by substantial evidence that a violation has occurred.

(g) *Initial decision.* (1) The examiner shall make an initial determination based exclusively on matters of record in the proceeding.

(2) When a former employee does not elect a hearing, the examiner shall consider all available evidence, including any documentary evidence submitted by the former employee, together with any written argument submitted by the parties, and shall issue an initial decision based thereon.

(3) The written initial decision shall set forth all findings of fact and conclusions of law relevant to the matter at issue.

§ 1207.735-703 Appeal from initial decision.

Within 30 days after the date of the initial decision, either party may appeal the initial decision to the Associate Deputy Administrator. The Associate Deputy Administrator will review the pertinent record of the proceedings and any written arguments submitted by the parties concerning the appeal. If the Associate Deputy Administrator modifies or reverses the initial decision, he or she shall specify the findings of fact and conclusions of law that are different than those of the examiner.

§ 1207.735-704 Administrative sanctions.

(a) The final agency decision shall be (1) the decision of the Associate Deputy Administrator on an appeal under § 1207.735-703, or (2) the decision of the examiner which shall become final if no appeal is taken within the 30 day time limit.

(b) If the final decision of the agency is that a violation of 18 U.S.C. 207 (a), (b), or (c), or of implementing regulations has occurred, the following sanctions may be ordered by the Administrator against the former employee:

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, NASA on any matter of business for a period not to exceed five years, which may be accomplished by directing NASA employees to refuse to participate in any such appearance or to accept any such communication; or

(2) Taking other appropriate disciplinary action.

(c) Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations under the procedures of this subpart may seek judicial review of the administrative determination and shall be notified of the opportunity of such review in the final decision of the agency.

Subpart H—Post Employment Regulations

AUTHORITY: 18 U.S.C. 207; 5 CFR Part 737.

SOURCE: 46 FR 51381, Oct. 20, 1981, unless otherwise noted.

§ 1207.735-800 Scope of subpart.

This subpart provides guidance to former NASA government employees who are subject to the restrictions of Title V of the Ethics in Government Act of 1978, as amended, and who want to communicate scientific or technical information to NASA.

§ 1207.735-801 Exemption for scientific and technological communications.

(a) Whenever a former government employee who is subject to the constraints of post employment conflict of interest, 18 U.S.C. 207, wishes to communicate with NASA under the exemption in section 207(f) for the making of a communication solely for the purpose of furnishing scientific or technological information, he or she shall state to the NASA employee contacted, the following information:

(1) That he or she is a former government employee subject to the post employment restrictions of 18 U.S.C. section 207 (a), (b), or (c)—specify which;

(2) That he or she worked on certain NASA programs—enumerate which; and

(3) That the communication is solely for the purpose of furnishing scientific or technological information.

(b) If the former government employee has questions as to whether the communication comes within the scientific and technological exemption, he or she should contact the General

Counsel, the designated agency ethics official.

PART 1209—BOARDS AND COMMITTEES

Subpart 1—Board of Contract Appeals

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Subpart 1—Board of Contract Appeals

AUTHORITY: Sec. 203, 72 Stat. 429, 42 U.S.C. 2473, unless otherwise noted.

SOURCE: 45 FR 1006, Jan. 4, 1980, unless otherwise noted.

§ 1209.100 Scope.

This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978 (Public Law 95-563) and prescribes its authority, duties, and membership.

§ 1209.101 Establishment.

The NASA Board of Contract Appeals was established by NASA Management Manual Instruction 2-4-1, June 25, 1959, and was subsequently continued in effect by NASA Management Instruction 1152.1A, April 1, 1968, NASA Management Instruction 1152.1B, October 28, 1970, and NASA Management Instruction 1152.1C, April 24, 1974. The Board is continued in effect by this subpart.

§ 1209.102 Authority and duties of the Board.

(a) The Board, located at NASA Headquarters, Washington, D.C., shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relating to a contract made by NASA and (2) relating to a contract made by any other agency when such agency or the Administrator for Federal Procurement Policy has designated the NASA Board to decide the appeal. In exercising this jurisdiction, the Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(b) The Board shall continue to act for and exercise the full authority of the Administrator in hearing and deciding all appeals in which, by the terms of a contract executed prior to March 1, 1979, the contractor may appeal to the Administrator from decisions of the contracting officer.

(c) There shall be no administrative appeal from decisions rendered by the Board. Either party to the dispute may appeal a decision of the Board under paragraph (a) of this section to the Court of Claims, as provided in section 10 of the Contract Disputes Act.

(d) The Board shall have all customary powers necessary for the performance of its duties including, but not limited to, the authority to issue rules of procedure, to conduct hearings, dismiss appeals or other proceedings, call witnesses, order the production of documents or other evidence, take official notice of facts within general knowledge, and decide all questions of fact or law raised by the appeal.

(e) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal.

(f) The member of members of the Board assigned to hear an appeal shall have authority to conduct prehearing conferences, hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument to a designated panel of the Board. A single member of a panel may be assigned to hear and decide motions which are not dispositive of the appeal.

(g) An appeal shall normally be adjudicated by a panel of two or more members. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal.

§ 1209.103 Membership.

(a) The Board shall consist of at least three members appointed by the Administrator, one of whom shall be designated as Chairperson. A Vice-Chairperson may also be designated from the appointed members. Members may perform other duties, not inconsistent with their primary duty, as assigned by the Administrator. The Board is responsible directly to the Administrator.

(b) Members of the Board are hereby designated Administrative Judges.

(c) Members must be qualified in accordance with the provisions of section 8(b)(1) of the Contract Disputes Act of 1978.

(d) Additional members, qualified in accordance with paragraph (c) of this section, and currently serving on other agency boards, may be designated by the Administrator to serve on the Board on an ad hoc basis for the adjudication of particular appeals.

(e) No member of the Board shall consider an appeal if the member has participated in any aspect of the award or administration of a contract in dispute.

§ 1209.104 Responsibilities of the chairperson.

The Chairperson of the Board of Contract Appeals shall be responsible for:

(a) The administration of the Board;

(b) The assignment of a member or members of the Board to act for the Board in each appeal and the assignment of the panel of Board members to decide each appeal;

(c) The receipt and custody of all papers and material relating to contract appeals; and

(d) The designation of an acting Chairperson during the Chairperson's absence, disqualification, or disability, who is empowered to exercise the powers of the Chairperson, provided a Vice-Chairperson has not been formally designated;

(e) The submission of a report, not less often than annually, to the Administrator on the status of the Board's activities.

Subpart 2—[Reserved]

Subpart 3—Contract Adjustment Board

AUTHORITY: Pub. L. 85-804 and 42 U.S.C. 2473(c)(1).

SOURCE: 43 FR 50674, Oct. 31, 1978, unless otherwise noted.

§ 1209.300 Scope.

This subpart continues in effect the Contract Adjustment Board (hereinafter referred to as "the Board") to consider and dispose of requests for extraordinary contractual adjustments by contractors of the National Aeronautics and Space Administration (hereinafter referred to as NASA).

§ 1209.301 Authority.

(a) The Act of August 28, 1958 (50 U.S.C. 1431-35), (hereinafter referred to as "the Act") empowers the President to authorize departments and agencies exercising functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the President deems that such action would facilitate the national defense.

(b) Executive Order No. 10789, dated November 14, 1958 (23 FR 8897), authorizes the Administrator, NASA, to exercise the authority conferred by the Act and to prescribe regulations for the carrying out of such authority.

(c) NASA Procurement Regulation, Part 17 (41 CFR Chapter 18), establishes standards and procedures for the disposition of requests for extraordinary contractual adjustments by NASA contractors.

§ 1209.302 Establishment of Board.

The Board was established on May 15, 1961, was continued in effect by NASA Management Issuances (NMI) 1152.5, dated October 25, 1963, NMI 1152.5A, dated October 8, 1971, and NMI 1152.5B, dated February 20, 1976, and is further continued in effect by this regulation.

§ 1209.303 Function of Board.

(a) The Board is authorized to act for an exercise the authority of the Administrator in cases involving request by NASA contractors for extraordinary contractual adjustments under the Act. Such authority will be exercised in accordance with the standards and procedures established by the Administrator, subject to such limitations as the Administrator may prescribe.

(b) The Board shall have the power to approve, authorize or direct any action, including the modification or release of any obligations, and to make all determinations and findings, which are necessary or appropriate for the conduct of its functions, and may adopt such rules of procedure as it considers desirable.

(c) The concurring vote of a majority of the total Board membership shall constitute an action of the Board. Decisions of the Board shall be final but the Board may reconsider and modify, correct or reverse any Board decision previously made.

[43 FR 50674, Oct. 31, 1978; 44 FR 69935, Dec. 5, 1979]

§ 1209.304 Membership.

The Board will consist of a chairperson and four other members, all of whom shall be appointed by the Administrator.

§ 1209.305 Legal advice and assistance.

The General Counsel of NASA shall provide the Board with all necessary legal advice and assistance.

Subpart 4—Inventions and Contributions Board

AUTHORITY: 42 U.S.C. 2457(f) and 2458.

SOURCE: 43 FR 29105, July 6, 1978, unless otherwise noted.

§ 1209.400 Scope.

This subpart describes the functions, authority, and membership of the NASA Inventions and Contributions Board (hereafter referred to as "the Board").

§ 1209.401 Establishment.

Pursuant to the authority of the National Aeronautics and Space Act of 1958 as amended (42 U.S.C. 2457(f), 2458) and the Government Employees Incentive Awards Act of 1954 (5 U.S.C. 4501-6), the Board was established on December 4, 1958, and is further continued in effect by this Subpart 1209.4.

§ 1209.402 Responsibilities.

(a) *Waiver of rights in inventions.* Under the authority of 42 U.S.C. 2457(f) and pursuant to 14 CFR Subpart 1245.1 (NASA Management Instruction 5109.2), the Board will receive and evaluate petitions for waiver of rights of the United States to inventions, accord each interested party an opportunity for a hearing, and transmit to the Administrator its findings of fact as to such petitions and its recommendations for action to be taken with respect thereto.

(b) *Patent licenses.* Under the authority of 42 U.S.C. 2457(g) and pursuant to 14 CFR Subpart 1245.2 (NASA Management Instruction 5109.3), the Board will evaluate all applications for licenses under NASA-owned patents and patent applications that are forwarded to it by the Assistant General Counsel for Patent Matters, and shall recommend to the Administrator: (1) Whether a nonexclusive or exclusive license should be granted; (2) the identity of the licensee; and (3) any special terms or conditions of the license. The Board will also accord a licensee an opportunity for a hearing with respect to the revocation of its license in response to an appeal submitted for that purpose, and will be responsible for making findings of fact and recommendations and forwarding them to the Administrator for his decision.

(c) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 42 U.S.C. 2458 and pursuant to 14 CFR Part 1240 (NASA Management Instructions 5700.1 and 5700.3), the Board will receive and evaluate each application for award for any scientific or technical contribution to the Administration which has significant value in the conduct of aeronautical and space activities, will accord each applicant an opportunity for a hearing upon such application, and will then transmit to the Administrator its recommendation as to the amount of the monetary award and terms of the award, if any, to be made to an applicant for such contribution.

(2) If the contribution is made by a Government employee, the Board is also authorized to consider such contribution for award under the incentive awards program and to make an award, if any, on its own cognizance, up to the amount of $5,000 in accordance with NASA supplements to chapter 451 of the Federal Personnel Manual covering this subject.

§ 1209.403 Organizational location.

The Board is established within the Office of Management Operations.

§ 1209.404 Membership.

(a) The Board will consist of a full-time chairperson and no less than six members appointed by the Administrator from within NASA. One of the members will be designated by the Administrator as vice chairperson. The chairperson is responsible directly to the Administrator.

(b) The chairperson of the Board is appointed for an unlimited period. All other Board members will be appointed initially for a period of 3 years. Normally, membership will rotate and one-third of the membership will be replaced by new members each year. However, the chairperson is authorized to extend the initial appointment of any Board member for an additional period of service. If a member resigns or is otherwise unable to participate in the Board's activities, a replacement may be appointed for the remainder of the uncompleted term and, with the approval of the chairperson, may be appointed for a full 3-year term upon the expiration of the original term. This procedure will generally result in a complete change in membership at the end of each 3-year period, and will provide the Board with a continual infusion of new members with a variety of professional backgrounds and interests. Duties performed by the Board members will be in addition to the regular duties of the individuals appointed to the Board.

(c) The chairperson is authorized to:

(1) Establish and reestablish such panels as may be considered necessary to discharge the responsibilities and perform the functions of the Board, and to

(2) Issue implementing rules and procedures, and take such other actions as are necessary to perform the Board's functions.

§ 1209.405 Supporting services.

(a) The Staff of the Inventions and Contributions Board is established to assist the Board in discharging its functions and responsibilities. The staff will:

(1) Prepare analyses of petitions for waiver of rights to inventions for the consideration of the Board;

(2) Prepare evaluation of proposed awards;

(3) Provide assistance to the Assistant General Counsel for Patent Matters in the review and processing of applications for patent license for consideration by the Board;

(4) Document Board actions; and

(5) Perform such other functions as may be required.

(b) A full-time director of the staff will serve as a nonvoting secretary of the Inventions and Contributions Board, and will direct the activities of the staff of the Inventions and Contributions Board.

(c) The director of the staff of the Inventions and Contributions Board will report to the chairperson of the Board.

PART 1210—DEVELOPMENT WORK FOR INDUSTRY IN NASA WIND TUNNELS

Sec.
1210.1 Introduction.
1210.2 General classes of work.
1210.3 Priorities and schedules.
1210.4 Company projects.
1210.5 Government projects.
1210.6 Test preparation and conduct.

AUTHORITY: 50 U.S.C. 511-515, 42 U.S.C. 2473(c) (5) and (6).

SOURCE: 43 FR 45823, Oct. 4, 1978, unless otherwise noted.

§ 1210.1 Introduction.

(a) *Authority.* The regulations, as they apply to the Unitary Wind Tunnel Plan facilities, are promulgated under authority of the Unitary Wind Tunnel Plan Act of 1949, Pub. L. 85-568, and codified in 50 U.S.C 511-515. This statute states that "The facilities authorized * * * shall be operated and staffed by the National Aeronautics and Space Administration but shall be available primarily to industry for testing experimental models in connection with the development of aircraft and missiles. Such tests shall be scheduled and conducted in accordance with industry's requirements, and allocation of laboratory time shall be made in accordance with the public interest, with proper emphasis upon the requirements of each military service and due consideration of civilian needs."

(b) *Unitary wind tunnel plan facilities.* The unitary wind tunnel plan facilities are the Ames Research Center 11- by 11-foot wind tunnel, 9- by 7-foot wind tunnel, and 8- by 7-foot wind tunnel; the Langley Research Center 4- by 4-foot high Mach number test section and the 4- by 4-foot low Mach number test section; and the Lewis Research Center 10- by 10-foot wind tunnel. These wind tunnels are operated by NASA for industry, NASA, the Department of Defense, and other Government agency projects.

(c) *National aeronautical facilities.* When completed, the national aeronautical facilities will be the national transonic facility at Langley Research Center and the modified 40- by 80-foot wind tunnel and the new 80- by 120-foot test section at Ames Research Center. The wind tunnels will be operated by NASA for industry, NASA, the Department of Defense, and other Government agency projects.

(d) *All other wind tunnels.* All other NASA wind tunnels will be used primarily for NASA research. However, all of these wind tunnels may be used for industry work when it is in the public interest either in joint programs with NASA or on a fee basis.

(e) *NASA policy.* All the projects to be performed in any of the NASA wind tunnels must be appropriate to the facility.

§ 1210.2 General classes of work.

Work for industry in the NASA facilities shall be divided into four project categories:

(a) *Company projects.* Includes work for industry on:

(1) Projects which are neither under contract nor supported by a letter of intent from a Government agency, and

(2) Company desired tests which are related to a project which is either under contract with or supported by a letter of intent from a Government agency, but are beyond the scope of the tests requested by the Government agency. A fee will be charged for these company projects.

(b) *Government projects.* Includes work for industry on projects which are either under contract with or supported by a letter of intent from a Government agency. The work must be requested by the Government agency. No fee will be charged for this type of work. (An exception is the national transonic facility for which a reimbursable policy is being developed.)

(c) *United States/foreign industry consortium projects.* This involves U.S. companies, which have formed a consortium or any other type of association with foreign companies, that desire tests on aerospace projects of joint or foreign interest. An application for work for such a consortium shall disclose the foreign interest in or anticipated foreign benefit from tests to be conducted and shall first be reviewed by the Director, International Affairs Division for consistency with current U.S. foreign policy and for compatibility with section 102 of the National Aeronautics and Space Act of 1958, as amended, prior to a final decision being reached on the application. A fee will be charged for these consortium projects unless, in the review procedure above, it is determined that Government agency cooperative sponsorship warrants a nonfee arrangement.

(d) *Foreign company projects.* Foreign company requests for wind tunnel use that are not related to U.S. Government or U.S. industry interests or programs will generally not be granted and will in no event be granted prior to a review, as required in paragraph (c) of this section, by the Director, International Affairs Division.

§ 1210.3 Priorities and schedules.

(a) *Priorities.* Unitary wind tunnels shall be available primarily to industry for development work. However, allocations of wind tunnel time shall be in accordance with the public interests, with proper emphasis upon the requirements of the military services and due consideration of civilian needs. Research work shall have priority in all other NASA facilities. Priority conflicts may be referred to the Associate Administrator for Aeronautics and Space Technology for review and final determination.

(b) *Schedules.* Schedules showing the allocation of testing time for Government projects and for company projects for unitary wind tunnels and other major wind tunnels will be established by the appropriate Center each month for the ensuing 3-month period and submitted to NASA Headquarters, Attn.: Code RA, by the first day of each month.

§ 1210.4 Company projects.

(a) *Initiation of company projects.* Company projects will be initiated by a letter to the Center Director followed by a conference between company and NASA representatives at the Center having responsibility for the facility proposed for the project. The company representatives will be required to explain the technical need for the project and why the NASA facility is required, as well as to define the extent of the test program, model and equipment requirements, and schedule. The Center shall maintain a file of all company requests and their disposition. The company may be required to provide a safety analysis report (SAR) to augment the wind tunnel SAR by describing potential hazards that the company test program, model and equipment may present to NASA facilities and personnel.

(b) *Scheduling of tests.* In scheduling time for company projects, the responsible NASA Center will take into account priorities as specified in § 1210.3 and all projects, including Government, company, and NASA research work relative to the national interest. Every reasonable attempt will be made to accommodate technically justifiable projects on as timely a basis as possible.

(c) *Fees for company projects.* The policy on charges for the use of NASA facilities is explained in NASA Management Instruction 9080.1A, dated November 21, 1975, titled, "Review, Approval and Imposition of User Charges." The fee imposed for a company project will cover all direct and indirect costs to NASA for the wind tunnel test.

(1) *Occupancy time charge.* (i) The occupancy time will be computed from the start of installation of the test article in the wind tunnel test section through the time on which the test article is removed from the test section and the test section restored to its original condition.

(ii) The occupancy time rate will be computed from the sum of the annual cost of the operating crew plus the estimated annual maintenance cost of the facility and will be determined in accordance with NASA Management Instruction 9080.1A.

(iii) The sum of the annual cost for the operating crew and the estimated annual maintenance cost divided by the number of operational weeks, depending on the facility, gives the weekly occupancy rate. This fee will be charged per basic week of 5 days, each day to be one-fifth week. The remaining weeks over the number of operational weeks for each year are the estimated maintenance reserve and holiday allowance; hence, no charge will be made for a holiday occurring during a test period.

(2) *Energy/fuel.* The charge for energy/fuel will be determined from the energy/fuel consumed during the tests and the actual cost to the NASA.

(3) *Data reduction.* The cost of data reduction and the data report will include labor, materials, computing machine rental, and appropriate indirect charges in accordance with NASA Management Instruction 9080.1A.

(4) *Cancellation of scheduled wind tunnel time.* Upon determination of a test schedule by the representatives of the company and of the NASA, it becomes the responsibility of the company to meet this schedule. A project may be canceled by the company without charge on 60 days' notice depending upon the readiness of succeeding projects. In the event subsequently scheduled work cannot be scheduled in lieu of the company's work, when canceled with less than 60 days' notice, the company shall be required to pay the occupancy time charge for the scheduled test period or for the period the facility test section is idle due to the cancellation, whichever results in the smaller charge. Curtailment of a project underway before the end of the scheduled test period may be made by the company. In this event, the company shall be required to pay the occupancy charge for the time used plus the unused scheduled time or for the idle time of the test section, whichever is the smaller.

(5) *High power requirements.* Unavailability of adequate power or economic considerations may, on occasion, cause delay or cancellation of high-powered test runs. The company shall cooperate with the facility staff in the scheduling of low-powered runs during periods when large blocks of power are unavailable. However, should rescheduling of test runs to accommodate power shortages be impractical, occupancy time charge credits will be made for time lost arising from such shortages. The basis for these credits, which will also be made for delays due to breakdown or malfunction of Government-furnished equipment or instrumentation, or due to other reasons beyond the control of the company, will be determined by each Center. The test period allotted for the program may be extended to offset delays in lieu of refund.

(d) *Test data transmittal.* The basic data for company projects will be transmitted to the requesting company without detailed analysis but with the necessary description of methods and techniques employed to permit proper interpretation of the data.

(e) *Proprietary rights.* In order to protect the trade secrets of companies, NASA will generate one set of final results, which will become the property of the company and be promptly transmitted to the company. If, subsequently, there is need to review the results, it will be the responsibility of the company to provide the NASA Center with copies of the resulting data on loan. Upon completion of the review, the data will be returned to the company. Should the company desire to maintain its trade secret rights in the data during the loan period, it should mark the data with a notice stating that the data shall not be used or disclosed other than for review purposes without prior written permission of the company. NASA, in turn, will protect that data covered by the notice which is protected under the law as a trade secret.

(f) *Test preparation and conduct* (see § 1210.6).

§ 1210.5 Government projects.

(a) *Initiation of Government projects.* Government projects shall be initiated through a conference of representatives from the contracted company, the sponsoring Government agency, and the staff of the NASA Center having responsibility for the facility proposed for the project. The purpose of the conference will be to establish the technical basis for the project and why the NASA facility is required as well as to define the extent of the test program, model and instrumentation requirements, and schedule. Upon concurrence of the Center Director, the sponsoring Government agency will submit a letter of request to NASA Headquarters for approval as well as clearing the request through the projects allocation and priority group (see paragraph (b) of this section). A safety analysis report (SAR) may be required to augment the wind tunnel SAR by describing the potential hazards that the project test program, model, and equipment may present to NASA facilities and personnel.

(b) *Projects allocation and priority group.* For coordinating Government projects, there is a group established jointly by the Department of Defense and the NASA. It consists of one representative each from the Air Force, Army, Navy, and NASA, competent to determine military priorities in the use of the NASA and other Government-owned facilities. The group is known as the aircraft, missile and propulsion projects allocation and priority group.

(c) *Scheduling of tests.* Government projects will be scheduled with due consideration of the priorities established by the projects allocation and priority group.

(d) *Test data transmitted.* The basic data for Government projects, without detailed analysis but with the necessary description of methods and techniques employed to permit the proper interpretation of the data, will be transmitted to the company for whom the tests were made and the sponsoring Government agency. Further disclosure by NASA of the test results will be made only with the prior concurrence of the sponsoring Government agency.

§ 1210.6 Test preparation and conduct.

(a) *Programing by user.* The user will be given the greatest possible freedom within the objectives of the scheduled program to obtain the precise information it requires, to determine the sequence and number of test runs to be made, and to make modifications to the program arising from the results currently being obtained, subject to requirements of safety, energy conservation, practicability, and the total time assigned.

(b) *Instrumentation.* Each facility will provide basic instrumentation suitable for the test range of the respective facility and computing equipment for the reduction of test data. Information will be furnished for each facility on the permissible size of model, standard balances, safety margins to be used in the construction of models, model mounting details, and other pertinent factors. If the basic instrumentation furnished by the facility does not meet the test requirements, the company will provide suitable instrumentation which will generally be calibrated by the facility staff to insure accuracy of measurement. This instrumentation will be made available sufficiently in advance of the test date to accomplish the calibration. Serious delays arising from inaccuracies in user supplied instrumentation, if occurring during the scheduled test period, may result in reassignment of the position of the tests on the facility schedule. Detailed specifications and arrangements for special instrumentation will be established by mutual agreement. All model criteria required by the facility for safety consideration including the necessary drawings and stress analyses of the articles to be tested will be furnished at a time specified by the facility staff for their use in preparing for the test. The user will also be required to furnish all information necessary to prepare the data reduction software program at a date specified by the facility staff.

(c) *Test program.* All tests will be conducted under NASA supervision and by NASA personnel or by NASA support service contractor personnel unless approved otherwise by the facility manager. By agreement between the user (company representatives and the requesting agency) and the Center staff, changes in the test program may be made within the objectives of the scheduled program if time is available. When tests are not totally conducted by NASA personnel or by NASA support service contractor personnel, the NASA Field Installation Safety Officer shall verify that the company personnel are fully cognizant of facility safety problems and operations. A current SAR on the facility shall be available to the company personnel for review.

(d) *Handling test data.* The NASA staff will be responsible for obtaining all test data, its reduction to suitable coefficient form, and the accuracy of the final data, but the NASA will assume no responsibility for the interpretation of the data by others. Transmittal of the data will be made as rapidly as possible. For company projects, the data will be transmitted as directed by the company. The data for Government projects will be transmitted simultaneously to the sponsoring Government agency and the contractor, unless otherwise directed by the sponsoring agency.

(e) *Shops and office space.* During the conduct of user testing, the NASA will make available machine tools in the facility shop and desk space to the user whose projects are under tests.

(f) *Company furnished personnel.* User personnel furnished for each project will be agreed upon between the user and facility staff prior to the test.

PART 1211—EXTRATERRESTRIAL EXPOSURE

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1211.100 Scope.
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1211.105 Relationship with Departments of Health, Education, and Welfare and Agriculture.
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1211.107 Court or other process.
1211.108 Violations.

AUTHORITY: Secs. 203, 304, 72 Stat. 429, 433; 42 U.S.C. 2455, 2456, 2473; 18 U.S.C. 799; Art. IX, TIAS 6347 (18 UST 2416).

SOURCE: 34 FR 11975, July 16, 1969, unless otherwise noted.

§ 1211.100 Scope.

This part establishes:

(a) NASA policy, responsibility and authority to guard the Earth against any harmful contamination or adverse changes in its environment resulting from personnel, spacecraft and other property returning to the Earth after landing on or coming within the atmospheric envelope of a celestial body; and

(b) Security requirements, restrictions and safeguards that are necessary in the interest of the national security.

§ 1211.101 Applicability.

The provisions of this part apply to all NASA manned and unmanned space missions which land on or come within the atmospheric envelope of a celestial body and return to the Earth.

§ 1211.102 Definitions.

(a) "NASA" and the "Administrator" mean, respectively the National Aeronautics and Space Administration and the Administrator of the National Aeronautics and Space Administration or his authorized representative (see § 1204.509 of this chapter).

(b) "Extraterrestrially exposed" means the state or condition of any person, property, animal or other form of life or matter whatever, who or which has:

(1) Touched directly or come within the atmospheric envelope of any other celestial body; or

(2) Touched directly or been in close proximity to (or been exposed indirectly to) any person, property, animal or other form of life or matter who or which has been extraterrestrially exposed by virtue of paragraph (b)(1) of this section.

For example, if person or thing "A" touches the surface of the Moon, and on "A's" return to the Earth, "B" touches "A" and, subsequently, "C" touches "B," all of these—"A" through "C" inclusive—would be extraterrestrially exposed ("A" and "B" directly; "C" indirectly).

(c) "Quarantine" means the detention, examination and decontamination of any person, property, animal or other form of life or matter whatever that is extraterrestrially exposed, and includes the apprehension or seizure of such person, property, animal or other form of life or matter whatever.

(d) "Quarantine period" means a period of consecutive calendar days as may be established in accordance with § 1211.104(a).

(e) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and any other territory or possession of the United States, and in a territorial sense all places and waters subject to the jurisdiction of the United States.

§ 1211.103 Authority.

(a) Sections 203 and 304 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473, 2455 and 2456).

(b) 18 U.S.C. 799.

(c) Article IX, Outer Space Treaty, TIAS 6347 (18 UST 2416).

(d) NASA Management Instructions 1052.90 and 8020.13.

§ 1211.104 Policy.

(a) *Administrative actions.* The Administrator or his designee as authorized by § 1204.509 of this chapter shall in his discretion:

(1) Determine the beginning and duration of a quarantine period with respect to any space mission; the quarantine period as it applies to various life forms will be announced.

(2) Designate in writing quarantine officers to exercise quarantine authority.

(3) Determine that a particular person, property, animal, or other form of life or matter whatever is extraterrestrially exposed and quarantine such person, property, animal, or other form of life or matter whatever. The quarantine may be based only on a determination, with or without the benefit of a hearing, that there is probable cause to believe that such person, property, animal or other form of life or matter whatever is extraterrestrially exposed.

(4) Determine within the United States or within vessels or vehicles of the United States the place, boundaries, and rules of operation of necessary quarantine stations.

(5) Provide for guard services by contract or otherwise, as may be necessary, to maintain security and inviolability of quarantine stations and quarantined persons, property, animals, or other form of life or matter whatever.

(6) Provide for the subsistence, health, and welfare of persons quarantined under the provisions of this part.

(7) Hold such hearings at such times, in such manner and for such purposes as may be desirable or necessary under this part, including hearings for the purpose of creating a record for use in making any determination under this part or for the purpose of reviewing any such determination.

(8) Cooperate with the Department of Health, Education, and Welfare and the Department of Agriculture in accordance with the provisions of § 1211.105.

(9) Take such other actions as may be prudent or necessary and which are consistent with this part.

(b) *Quarantine.* (1) During any period of announced quarantine, the property within the posted perimeter of the Lunar Receiving Laboratory at the Manned Spacecraft Center, Houston, Tex., is designated as the NASA Lunar Receiving Laboratory Quarantine Station.

(2) Other quarantine stations may be established if determined necessary as provided in paragraph (a)(4) of this section.

(3) During any period of announced quarantine, no person shall enter or depart from the limits of any quarantine station without permission of the cognizant NASA quarantine officer. During such period, the posted perimeter of a quarantine station shall be secured by armed guard.

(4) Any person who enters the limits of any quarantine station during the quarantine period shall be deemed to have consented to the quarantine of his person if it is determined that he is or has become extraterrestrially exposed.

(5) At the earliest practicable time, each person who is quarantined by NASA shall be given a reasonable opportunity to communicate by telephone with legal counsel or other persons of his choice.

§ 1211.105 Relationship with Departments of Health, Education, and Welfare and Agriculture.

(a) If either the Department of Health, Education, and Welfare or the Department of Agriculture exercises its authority to quarantine an extraterrestrially exposed person, property, animal, or other form of life or matter whatever, NASA will, except as provided in paragraph (c) of this section, not exercise the authority to quarantine that same person, property, animal, or other form of life or matter whatever. In such cases, NASA will offer to these departments the use of the Lunar Receiving Laboratory Quarantine Station and such other service, equipment, personnel, and facilities as may be necessary to ensure an effective quarantine.

(b) If neither the Department of Health, Education, and Welfare or the Department of Agriculture exercises its quarantine authority, NASA shall exercise the authority to quarantine an extraterrestrially exposed person, property, animal or other form of life or matter whatever. In such cases, NASA will inform these departments of such quarantine action and, in addition, may request the use of such service, equipment, personnel and facilities of other Federal departments and agencies as may be necessary to ensure an effective quarantine.

(c) NASA shall quarantine NASA astronauts and other NASA personnel as determined necessary and all NASA property involved in any space mission.

§ 1211.106 Cooperation with States, territories and possessions.

Actions taken in accordance with the provisions of this part shall be exercised in cooperation with the applicable authority of any State, territory, possession or any political subdivision thereof.

§ 1211.107 Court or other process.

(a) NASA officers and employees are prohibited from discharging from the limits of a quarantine station any quarantined person, property, animal or other form of life or matter whatever during order or other request, order or demand an announced quarantine period in compliance with a subpoena, show cause of any court or other authority without the prior approval of the General Counsel and the Administrator.

(b) Where approval to discharge a quarantined person, property, animal or other form of life or matter whatever in compliance with such a request, order or demand of any court or other authority is not given, the person to whom it is directed shall, if possible, appear in court or before the other authority and respectfully state his inability to comply, relying for his action upon this § 1211.107.

§ 1211.108 Violations.

Whoever, willfully violates, attempts to violate, or conspires to violate any provision of this part or any regulation or order issued under this part or who enters or departs from the limits of any quarantine station in disregard of the quarantine rules or regulations or without permission of the NASA quarantine officer shall be fined not more than $5,000 or imprisoned not more than 1 year, or both (18 U.S.C. 799).

PART 1212—PROTECTION OF PERSONAL PRIVACY

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AUTHORITY: The National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473; The Privacy Act of 1974, 88 Stat. 1896, 5 U.S.C. 552a.

SOURCE: 44 FR 54994, Sept. 24, 1979, unless otherwise noted.

Subpart 1212.1—Basic Policy

§ 1212.100 Scope of part.

This Part 1212 implements the Privacy Act of 1974, as amended (5 U.S.C. 552a; referred to as "the Privacy Act"), and establishes the policies, responsibilities, and procedures for the collection, maintenance, use and dissemination by the National Aeronautics and Space Administration (NASA) of personal information contained in a NASA system of records. This part also establishes procedures for a subject individual to have access to and request correction of information in a record. This part applies to systems of records located at or under the cognizance of NASA Headquarters, NASA Field Installations, and NASA Component Installations, as defined in Part 1201.

§ 1212.101 Definitions.

For the purposes of this part, the following definitions shall apply in addition to definitions contained in the Privacy Act:

(a) The term "record" means any item, collection, or grouping of information about an individual including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains a name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. With the exception of photographs, identifiers alone do not constitute a record.

(b) The term "system or records" means a group of any records from which information is retrieved by the name of the indivudual or by some identifying number, symbol or other identifying particular assigned to the individual.

(c) The term "system manager" means the NASA official who is responsible for a system of records as designated in the system notice of that system of records published in the FEDERAL REGISTER. When a system of records includes portions located at more than one NASA installation, the term "system manager" includes any subsystem manager designated in the system notice as being responsible for that portion of the system of records located at the respective installation.

(d) The term "routine use" means, with respect to the disclosure of a record, the use of the record for a purpose which is compatible with the purpose for which it was collected. Disclosure of a record to those officers and employees of NASA who have a need for the record in the performance of their duties shall not be regarded as a "routine use."

(e) The term "NASA employee" or "NASA official," particularly for the purpose of § 1212.400(b)(1) relating to the disclosure of a record to those who have a need for the record in the performance of their duties, includes employees of a NASA contractor which operates or maintains a NASA system of records for or on behalf of NASA.

(f) The term "NASA information center" refers to information centers established to facilitate public access to NASA records under Part 1206. See § 1206.401 for the address of each NASA information center.

§ 1212.102 General policy.

In compliance with the Privacy Act and in accordance with the requirements and procedures of this part, NASA has an obligation to:

(a) Permit an individual to determine whether there are records pertaining to the individual in a system of records maintained by NASA;

(b) Permit an individual to prevent records pertaining to the indivudual obtained by NASA and placed in a system of records for a particular purpose from being used or made available for another purpose without the individual's consent;

(c) Permit an individual to gain access to information about the individual in a NASA system of records, to have a copy made, and, if appropriate under Subpart 1212.6, to correct or amend the records; and

(d) Maintain any record in a system of records only for a necessary and lawful purpose, assure that the information is current and accurate, and provide adequate safeguards to prevent misuse of the information.

Subpart 1212.2—Requirements for Maintaining Systems of Records

§ 1212.200 Publication of annual system notices.

(a) A system notice for each NASA system of records shall be published annually in the FEDERAL REGISTER in the format prescribed by the Office of Management and Budget and the General Services Administration.

(b) In accordance with reporting requirements issued by the Office of Management and Budget, NASA shall provide to Congress and the Office of Management and Budget advance notice of any proposal to establish or significantly alter any NASA system of records.

§ 1212.201 System of records of other agencies under NASA's control.

(a) The procedures concerning maintenance of and access to records of other agencies under NASA's control shall normally be governed by the regulations of the agency publishing the system notice for the particular system of records.

(b) Any system of records maintained by NASA which is in addition to or substantially different from those of a government-wide nature described in the notice published by another agency shall be regarded as a NASA system of records subject to the requirements of this part, and the NASA system notice shall include a reference to the system notice of the other agency.

§ 1212.202 Requirements for maintaining systems of records.

In maintaining systems of records, the following requirements shall be met:

(a) Maintain only information about an individual relevant and necessary to accomplish a purpose or to carry out a function of NASA authorized by law or by Executive Order of the President.

(b) Maintain records used by NASA officials in making any determination about any individual with such accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in making the determination.

(c) Maintain no record describing how an individual exercises rights guaranteed by the First Amendment to the U.S. Constitution unless expressly authorized by statute or by the individual, or unless required by an authorized law enforcement activity.

§ 1212.203 Requirements for collecting information.

In collecting information for systems of records, the following requirements shall be met:

(a) Information shall be collected to the greatest extent practicable directly from the individual, particularly when the information may result in adverse determinations about the individual's rights, benefits, and privileges under Federal programs. Exceptions to this policy may be made under certain circumstances, such as one of the following:

(1) There is need to verify the accuracy of information supplied by an individual.

(2) The information can only be obtained from a third party.

(3) There is no risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned.

(4) Provisions are made to verify with the individual information collected from a third party.

(b) Each individual who is asked to supply information shall be informed of the following:

(1) The authority (whether granted by statute, or by Executive Order of the President) for requesting the information;

(2) Whether disclosure is mandatory or voluntary;

(3) The intended official use of the information;

(4) The routine uses which may be made of the information, as published in the system notices;

(5) The effects on the individual, if any, of not providing all or any part of the requested information.

§ 1212.204 Mailing lists.

(a) NASA may maintain for official purposes lists of individuals, their addresses and telephone numbers, including, if appropriate, home addresses and telephone numbers. These lists are not NASA systems of records for the purposes of this part.

(b) NASA will not sell, rent or otherwise disclose mailing lists to anyone except for official purposes of NASA, unless otherwise required by law.

§ 1212.205 Social security account numbers.

(a) It is unlawful for NASA to deny an individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose the individual's social security account number, except where:

(1) The disclosure is required by law; or

(2) The disclosure is from a system of records in existence and operating before January 1, 1975, and was required under statute or regulation adopted before that date to verify the identity of the individual.

(b) Any time an individual is requested to disclose the social security account number, the official requesting the disclosure shall indicate whether that disclosure is mandatory or voluntary, by what authority the number is requested, and what uses will be made of it.

§ 1212.206 Safeguarding information in systems of records.

(a) Safeguards appropriate for a NASA system of records shall be developed by the system manager in a written plan approved by the installation Security Officer.

(b) When records or copies of records are distributed to persons other than those having custody of the systems of records, they shall be prominently identified as records protected under the Privacy Act and shall be subject to the same safeguard, retention and disposition requirements applicable to the system of records.

(c) Records that are otherwise required by law to be released to the public need not be safeguarded or identified as Privacy Act records. The system notice shall indicate that the records are publicly available.

§ 1212.207 Duplicate copies of records or portions of records.

(a) NASA officials may maintain for official purposes duplicate copies of records or portions of records from a system of records for use within their organizational unit. This practice should occur only where there are justifiable organizational needs for it, e.g., where geographic distances make use of the system of records time consuming or inconvenient. These duplicate copies shall not be considered a separate NASA system of records. For example, an office head or designee may keep duplicate copies of personnel, training, or similar records on employees within the organization for administrative convenience purposes.

(b) No disclosure shall be made from duplicate copies outside of the organizational unit. Any outside request for disclosure shall be referred to the appropriate system manager for response.

(c) Duplicate copies are subject to the same safeguard requirements applicable to the system of records.

Subpart 1212.3—Authority and Responsibilities

§ 1212.300 NASA employees.

(a) Each NASA employee is reponsible for adhering to the requirements of the Privacy Act and this part.

(b) An employee shall not seek or obtain access to a record in a NASA system of records or to copies of any portion of such records under false pretenses. Only those employees with an official "need to know" may seek and obtain access to records pertaining to others.

(c) Employees shall refrain from discussing or disclosing personal information about others which they have obtained because of their official need to know such information in the performance of official duties.

(d) To the extent included in an individual contract which provides for the maintenance by or on behalf of NASA of a system of records to accomplish a function of NASA, the requirements of this section shall apply to contractor employees who work under the contract.

§ 1212.301 Associate Deputy Administrator.

The Associate Deputy Administrator is responsible for:

(a) Making final agency determinations on appeals (§ 1212.603);

(b) Authorizing exemptions § 1212.700); and

(c) Authorizing an extension of up to 30 work days for making a final determination on an appeal (§ 1212.605).

§ 1212.302 Associate Administrator for Management.

(a) The Associate Administrator for Management is responsible for the following:

(1) Providing overall supervision and coordination of NASA's policies and procedures under this part;

(2) Approving system notices for publication in the FEDERAL REGISTER;

(3) Assuring that NASA employees and officials are informed of their responsibilities and that they receive appropriate training for the implementation of these requirements; and

(4) Preparing and submitting the annual and special reports required under this part, including establishing appropriate reporting procedures.

(b) The Associate Administrator for Management may establish a position of "NASA Privacy Officer" or designate someone to function as such an officer, reporting directly to the Associate Administrator for Management, and delegate to that officer any of the functions described in paragraph (a) of this section.

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.303 Headquarters and field or component installations.

(a) Officials-in-Charge of Headquarters Offices, Directors of NASA Field Installations and Officials-in-Charge of Component Installations are responsible for the following with respect to those systems of records maintained in the organization:

(1) Avoiding the establishment of new systems of records or new routine uses of a system of records without first complying with the requirements of this part;

(2) Ensuring that the requirements of this part and the Privacy Act are followed by all employees;

(3) Ensuring that there is appropriate coordination within NASA before a determination is made to disclose information without the individual's

consent under authority of § 1212.400(b); and

(4) Providing appropriate oversight for responsibilities and authorities exercised by system managers under their jurisdiction (§ 1212.304).

(b) Directors of NASA Field Installations and Officials-in-Charge of Component Installations may establish the position of Installation Privacy Officer or designate someone to function as such to assist in carrying out the responsibilities listed in paragraph (a) of this section.

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.304 System manager.

(a) Each system manager is responsible for the following with regard to the system of records over which the system manager has congnizance:

(1) Overall compliance with the Privacy Act and these regulations,

(2) Ensuring that each person involved in the design, development, operation or maintenance of the system of records is instructed with respect to the requirements of this part and the possible penalties for noncompliance;

(3) Submitting a request to the Associate Deputy Administrator for an exemption of the system under Subpart 1212.7, setting forth in proposed rulemaking form the reasons for the exemption and citing the specific provision of the Privacy Act which is believed to authorize the exemption;

(4) After consultation with the Office of the General Counsel or the Chief Counsel, making reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(5) In accordance with the requirements of § 1212.601, making an initial determination on an individual's request to correct or amend a record,

(6) Prior to disclosure of any record about an individual, assuring that the record is first reviewed for accuracy, completeness, timeliness and relevance;

(7) Authorizing disclosures of a record without the individual's consent under § 1212.400(b)(1) through (11);

(8) Responding within the requirements of § 1212.500 to an individual's request for information as to whether the system contains a record pertaining to the individual;

(9) In accordance with the requirements of Subpart 1212.5, responding to an individual's request for access and copying of a record;

(10) Correcting a record under § 1212.606, or filing in an individual's record a statement of dispute and the NASA addendum submitted in accordance with § 1212.607;

(11) Preparing an addendum to an individual's statement of dispute (§ 1212.607);

(12) Maintaining disclosure accountings in accordance with the requirements of § 1212.401;

(13) Notifying persons to whom a record has been disclosed and for which an accounting was made as to disputes and corrections involving the record; and

(14) Developing appropriate safeguards for the system of records.

(b) Where a system of records has subsystems described in the system notice, the subsystem manager will have the responsibilities outlined in paragraph (a) of this section. Although the system manager has no line authority over subsystem managers, the system manager does have overall functional responsibility for the total system, and may issue guidance to subsystem managers on implementation of this part. When furnishing information for required reports, the system manager will be responsible for reporting on the entire system of records, including any subsystems.

(c) Exercise of the responsibilities and authorities in paragraph (a) of this section by any system or subsystem managers at a NASA installation shall be subject to any conditions or limitations imposed in accordance with § 1212.303 (a)(4) and (b).

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.305 Assistant Administrator for Procurement.

The Assistant Administrator for Procurement is responsible for developing appropriate procurement regulations and procedures under which NASA contracts requiring the maintenance of a system of records in order to accomplish an agency function are made subject to the requirements of this part.

[47 FR 50467, Nov. 8, 1982]

§ 1212.306 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this Subpart 1212.3 is delegated to the officials named, subject to any conditions or limitations imposed in accordance with § 1212.303 (a)(4) and (b).

Subpart 1212.4—Disclosure of Records

§ 1212.400 Restrictions on disclosure.

(a) No record in a NASA system of records shall be disclosed to any person, or to another agency, except by written request of, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by paragraph (b) of this section.

(b) Under 5 U.S.C. 552a(b), disclosure of a record in a NASA system of records is authorized without the consent of the subject individual, if the disclosure of the record would be:

(1) To an officer or employee of NASA who has a need for the record in the performance of official duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552) and Part 1206;

(3) For a routine use described in the system notice for the system of records;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(5) To a recipient who has provided NASA with adequate advance written assurance that the record will be used solely as a statistical record, and the record is transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services Administration or a designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to NASA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person on a showing of compelling circumstances affecting the health or safety of an individual if notification of the disclosure is sent to the last known address of the subject individual;

(9) To either House of Congress or, to the extent the matter is within its jurisdiction, any committee or subcommittee of Congress, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) By order of a court of competent jurisdiction.

§ 1212.401 Accounting of certain disclosures.

(a) The system manager shall keep a disclosure accounting for each disclosure to a third party of a record from a system of records. Disclosure accountings are not required but are recommended for disclosures made:

(1) With the subject individual's consent, or

(2) Under the authority of § 1212.400(b) (1) or (2).

(b) The disclosure accounting required by paragraph (a) of this section include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the recipient person or agency.

(c) The disclosure accounting shall be retained for at least 5 years after the disclosure or for the life of the record, whichever is longer.

(d) The disclosure accounting maintained under the requirements of this section is not itself a system of records.

[44 FR 54994, Sept. 24, 1979, as amended at 47 FR 50467, Nov. 8, 1982]

§ 1212.402 Access to disclosure accounting.

Except for disclosures made under the authority of § 1212.400(b)(7) or where the system is exempt (see Subpart 1212.7), the disclosure accounting required under § 1212.401 shall be made available to the subject individual upon request in accordance with Subpart 1212.5

§ 1212.403 Review of records for accuracy.

Before disclosing any record about an individual to any person other than a NASA employee, unless the disclosure is required under the Freedom of Information Act (see § 1212.400(b)(2)), NASA shall make reasonable efforts to assure that the record is accurate, complete, timely and relevant for NASA purposes.

§ 1212.404 Notification of disclosure under compulsory legal process.

If a record is disclosed to any person under a compulsory legal process, the NASA system manager, after consultation with the Office of the General Counsel or the Chief Counsel, shall make reasonable efforts to serve notice on the subject individual when the compulsory process becomes a matter of public record. The mailing of notice to the individual's last known address constitutes a reasonable effort to notify the individual.

§ 1212.405 Notification to prior recipients of corrected or disputed records.

If any correction or statement of dispute is made or filed in a record under Subpart 1212.6, the NASA system manager shall notify each person or agency to whom that portion of the record had been disclosed, if an accounting of the disclosure exists under § 1212.401, as to the correction or statement of dispute.

Subpart 1212.5—Access to Records

§ 1212.500 Requests for access or general information.

(a) The procedures outlined in this Subpart 1212.5 apply to the following types of requests under the Privacy Act made by individuals concerning records about themselves:

(1) To determine if information on the requester is included in a system of records;

(2) For access to a record; and

(3) For an accounting of disclosures.

(b)(1) Requests must be directed to the appropriate system manager, or, if unknown, to the NASA information center. The request should be identified clearly on the envelope and on the letter as a "Request Under the Privacy Act."

(2) If known, requests should contain the following information to insure timely processing:

(i) Name and address of subject.

(ii) Identity of the system of records.

(iii) Nature of the request. If a request for amendment, a complete and comprehensive description of the amendment.

(iv) Identifying information such as location of the record, if known, full name, birth date, etc., as specified in the applicable system notice to assist in identifying the request.

(c)(1) If a request for access or amendment is received by the information center, it will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(2) The NASA information center or the system manager, as appropriate,

will acknowledge receipt of the request by NASA within 10 work days. If the request is so incomplete or incomprehensible that the requested record cannot be identified, additional information or clarification will be requested in the acknowledgment, and assistance to the individual will be offered as appropriate. If the request is sufficient for processing, the acknowledgment shall identify the responsible system manager.

(d) NASA need not comply with a general request for access to information concerning an individual, e.g., a request to provide copies of "all information contained in your files concerning me," although a good faith effort will be made to locate records if there is reason to believe NASA has records on the individual.

(e) Copies of all current NASA system notices, as well as a copy of these regulations, shall be maintained for public inspection in each NASA information center. An individual may address any general inquiries concerning NASA systems of records and these regulations to the appropriate NASA information center.

§ 1212.501 Right of access.

(a) Upon request in person, and following the identification procedures of § 1212.502, a subject individual and any accompanying representative shall be granted access to his or her record, including the right to request copies, unless the system of records has been determined to be exempt from this requirement under 5 U.S.C. 552a (j) or (k).

(b)(1) Upon a written request of the subject individual, the individual's representative shall be granted access to the subject's record, unless that system of records has been determined to be exempt under 5 U.S.C. 552a (j) or (k). The representative also may request copies of all or a portion of the record.

(2) A written request to allow access by a representative shall be signed by the subject individual and contain his or her address as well as the name and address of the representative being authorized access. The identities of both the subject individual and the representative must be verified following the procedures of § 1212.502.

(c) When an individual submits a request for records citing both the Privacy Act and the Freedom of Information Act, it shall be processed under Part 1206 if the individual is seeking records pertaining to a third party. If the individual is seeking his or her own records, the request shall be processed under this part. If the records requested are required to be released under the Freedom of Information Act (5 U.S.C. 552(b)), then a Privacy Act exemption may not be invoked to deny access. NASA shall not rely on any exemption contained in the Freedom of Information Act to withhold from an individual any record which is otherwise accessible to the individual under this part.

§ 1212.502 Identification procedures.

(a) Before a copy of a record is sent by mail in response to a written request for access, there must be sufficient evidence to assure that the requester and the subject of the record are the same. NASA reserves the right, at the discretion of the system manager, to require that a certificate of a notary public or equivalent official empowered to administer oaths accompany the request.

(b)(1) Before granting access to records in person, the requester or representative shall present appropriate and satisfactory identification, including:

(i) A valid unexpired driver's permit; or

(ii) An official employment identification card or badge; or

(iii) Any other form of identification which includes the individual's name, signature, or photograph or physical description.

(2) If the individual has no suitable identification a written statement shall be required asserting the individual's identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor and punishable by a fine of up to $5,000. A form will be provided by the system manager for this purpose.

(c) No verification of identity will be requested of individuals seeking access to records available to any member of the public under the Freedom of Information Act (5 U.S.C. 552) and Part 1206.

(d) Identity procedures more stringent than those required in this section may be prescribed by the system manager in the system notice when the records are medical or other highly sensitive records.

§ 1212.503 Fee schedule.

(a) *Prohibition against charging fees.* Individuals will not be charged for:

(1) Search for or retrieval of the requesting individual's records;

(2) Review of the requesting individual's records;

(3) Making a copy of a requesting individual's record when it is a necessary part of the process of making the record available for review;

(4) Transportation of the requesting individual's record;

(5) Making a copy of an amended record to provide the requesting individual with evidence of the amendment.

(b) *Waiver.* The system manager may, at no charge, provide copies of a record if it is determined the production of the copies are in the interest of the government.

(c) *Fee schedule and method of payment.* Fees will be charged as provide below, except as provided in paragraphs (a) and (b) of this section.

(1) Duplication of records—The system manager will follow the provisions of § 1206.700(a) in charging fees for duplication of records only.

(2) Where it is anticipated that duplication fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as great as are anticipated, the requesting individual shall be notified of the amount of the anticipated fees before copies are made. The notification shall offer the requester the opportunity to confer with agency personnel in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Where the anticipated fee chargeable under this section exceeds $25.00, an advance deposit of part or all of the anticipated fee may be required.

[48 FR 12084, Mar. 23, 1983]

§ 1212.504 Procedures for responding to requests for access.

(a)(1) The system manager, in response to a request for access, shall:

(i) Notify the requester that there is no record on the individual in the system of records; or

(ii) Make the individual's record available for personal inspection in the presence of a NASA representative, or upon request, promptly provide copies of the record, subject to the fee requirements.

(2) Unless the system manager agrees to another location, personal inspection of the record shall be at the location of the record as identified in the system notice.

(b) Normally, the system manager shall respond to a request for access within 10 work days of receipt of the request and the access shall be provided within 30 work days.

(c) The provisions of paragraph (a) do not apply where the record is subject to additional restrictions as specified in the system notice, or if it is exempt under 5 U.S.C. 552a (j) or (k) and is not otherwise required to be released under the Freedom of Information Act. Under these circumstances, the system manager shall notify the requester within 10 work days.

(d) In the event a request for access to a record is not granted within 30 work days of receipt of the request, the individual shall have the right to appeal. Such an appeal shall be filed and processed under the provisions of Subpart 1212.6. In any determination by a system manager denying an individual's request for access made under this section, the individual shall be informed in writing of:

(1) The reasons for the refusal; and

(2) The procedures to be followed to request a review of the refusal by the Associate Deputy Administrator, including the mailing address. (See § 1212.602)

§ 1212.505 Medical records.

Normally, an individual's medical record shall be disclosed to the individual, unless, in the judgment of the system manager, in consultation with a medical doctor, access to the record could have an adverse effect upon the individual. In this case, the system manager shall allow access to the record by a medical doctor designated in writing by the requesting individual. (See § 1212.501(b))

§ 1212.506 Test materials.

Test material and copies of certificates of eligibles and other lists of eligibles, the disclosure of which is proscribed by 5 CFR 294.501, shall be removed from an individual's record before granting access.

§ 1212.507 Release of records of deceased individuals.

Records of individuals who are deceased may be released to the executor or administrator of the individual's estate, or, if none, to the individual's next of kin, if the system manager has sufficient evidence to establish that the individual is deceased and if the identity procedures of § 1212.502 have been met by the representative.

Subpart 1212.6—Corrections and Amendments to Records and Appeals

§ 1212.600 Requests for correction or amendment of a record.

A subject individual may request that NASA correct or amend the individual's record. In making a request for correction, the individual must demonstrate why the correction is appropriate. Such a request shall be in writing, addressed to the appropriate system manager, and shall contain the following:

(a) A notation on the envelope and on the letter that it is a "Request for Amendment of Individual Record under the Privacy Act;"

(b) The name of the system of records;

(c) Any information necessary to retrieve the record, as specified in the system notice for the system of records;

(d) A description of that information in the record which is alleged to be incomplete or erroneous; and

(e) The reasons for requesting the change, together with any documentary evidence or material available to support the request.

§ 1212.601 Procedures and time limits for making initial determinations on requests to correct or amend.

(a) Within 10 work days of receipt by the system manager of an individual's request to correct or amend a record, the system manager shall provide the individual with a written determination or a written acknowledgement advising when a report of the action taken may be received.

(b) The system manager shall provide the individual with a written determination within 30 work days of receipt of the request unless unusual circumstances preclude completing action within that time. If the determination is to refuse to correct or amend the record as requested, the written determination shall explain the reasons for the refusal and inform the requester of the procedures to be followed to appeal the determination.

§ 1212.602 Procedures and time limits for appeals.

(a) A subject individual who (1) has requested amendment or correction of a record and has received an adverse initial determination, or (2) has been denied access to a record, or (3) has not been granted within 30 work days of receipt a request (See §1212.504), may appeal to the Associate Deputy Administrator.

(b) An appeal shall:

(1) Be in writing and addressed to the Associate Deputy Administrator, NASA, Washington, D.C. 20546;

(2) Be identified clearly on the envelope and in the letter as an "Appeal under the Privacy Act;"

(3) Include a copy of any pertinent documents; and

(4) State the reasons for the appeal.

(c) Appeals from adverse initial determinations or denials of access must be submitted within 30 calendar days of the date of receipt of the initial determination. Appeals involving failure to grant access may be submitted any time after the 30 work day period has expired (see § 1212.504).

§ 1212.603 Action on appeals.

(a) Except as provided in § 1212.607, a final determination on an appeal shall be made, and the requester notified, within 30 work days after its receipt.

(b) If a determination to deny access is upheld, the requester will be informed of the right to judicial review under 5 U.S.C. 552a(g).

(c) If a denial of a request to correct or amend a record is upheld, the final determination shall:

(1) Explain the basis for the denial;

(2) Include information as to how the requester goes about filing a statement of dispute under the procedures of § 1212.607; and

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552a(g).

§ 1212.604 Procedures for appeal of adverse determinations involving records of other agencies.

If an individual disagrees with an adverse determination by NASA involving access to or amendment of records belonging to another agency, the individual may seek review of the determination under procedures prescribed by the other agency.

§ 1212.605 Time extensions for good cause shown.

(a) When good cause is shown, the time limits for making a final determination may be extended for up to 30 work days.

(b) If an extension of time under this section is granted, the individual shall be promptly notified in writing of the reasons and the date when a final determination will be sent.

§ 1212.606 Correction or amendment of record.

When any record is corrected or amended under the procedures of this Subpart 1212.6, the correction shall be made by the system manager clearly on the record itself and all inaccurate information shall be deleted and destroyed. The individual shall then be informed in writing that the correction has been made. If the inaccurate or incomplete portion of the record has previously been disclosed and an accounting of the disclosure exists in accordance with the requirements of § 1212.401, then the system manager shall notify those persons or agencies of the corrected or amended information, referencing the prior disclosures (see § 1212.405).

§ 1212.607 Statements of dispute.

(a) If on appeal, a refusal to correct or amend records is upheld, the individual may file a statement of dispute.

(b) A statement of dispute shall:

(1) Be in writing;

(2) Set forth reasons for the individual's disagreement with NASA's refusal to amend the record;

(3) Be concise;

(4) Be addressed to the system manager; and

(5) Be identified on the envelope and in the letter as a "Statement of Dispute under the Privacy Act."

(c) The system manager shall prepare and include an addendum to the statement explaining the basis for NASA's refusal to amend the disputed record. A copy of the addendum shall be provided to the individual.

(d) The system manager shall ensure that the statement of dispute and addendum are either filed with the disputed record or that a notation appears in the record clearly referencing the statement of dispute and addendum so that they may be readily retrieved.

§ 1212.608 Disclosure of disputed information.

(a) The system manager shall promptly provide persons or agencies to whom the disputed portion of a record was previously disclosed and for which an accounting of the disclosure exists under the requirements of § 1212.401, with a copy of the statement of dispute and addendum, along with a statement referencing the prior disclosure (see § 1212.405). The subject individual shall be notified as to those individuals or agencies which are provided with the statement of dispute and addendum.

(b) Any subsequent disclosure of a disputed record shall clearly note the portion of the record which is disputed and shall be accompanied by a copy of the statement of dispute and addendum.

Subpart 1212.7—Exemptions

§ 1212.700 Exemptions.

(a) Under the provisions of 5 U.S.C. 552a(j) and (k), the Administrator of NASA is authorized to exempt certain NASA systems from portions of the requirements of this part.

(b) For those NASA systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons.

(c) Nothing in this part shall allow an individual access to any information compiled by NASA in reasonable anticipation of a civil action or proceeding.

§ 1212.701 Systems of records for which exemptions apply.

Exemptions have been invoked, in accordance with § 1212.700, for the following NASA systems of records:

(a) *Inspector General Investigations Case files*—(1) *Section of the Act from which exempted.* The Inspector General Investigations Case Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) *except* the following: (b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4)(A) through (F) relating to publishing an annual system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10) and (11) relating to criminal penalties.

(2) *Reasons for exemption.* The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(j) and this subpart for the reason that the Office of Inspector General is a component of NASA which performs as its principal function activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2).

(b) *Security Records System*—(1) *Sections of Act from which exempted.* The Security Records System is exempt from the following sections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction, and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

(2) *Reasons for exemption.* The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k) and this Subpart 1212.7 for the following reasons:

(i) Personnel Security Records contained in the system of records which are compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, Federal contracts, or access to classified information are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(ii) Criminal Matter Records are contained in the system of records and are exempt under the provisions of 5 U.S.C. 552a(k)(2) to the extent they constitute investigatory material compiled for law enforcement purposes.

(iii) The system of records includes records subject to the provisions of 5 U.S.C. 552(b)(1) (required by Executive order to be kept secret in the interest of national defense or foreign policy), and such records are exempt under 5 U.S.C. 552a(k)(1).

[44 FR 54994, Sept. 24, 1979, as amended at 45 FR 67079, Oct. 9, 1980]

Subpart 1212.8—Failure To Comply With Requirements of this Part

§ 1212.800 Civil remedies.

Failure to comply with the requirements of the Privacy Act and this part could subject NASA to civil suit under the provisions of 5 U.S.C. 552a(g).

§ 1212.801 Criminal penalties.

(a) A NASA employee may be subject to criminal penalties under the provisions of 5 U.S.C. 552a(i) (1) and (2).

(b) An individual who seeks access to a NASA record under false pretenses is subject to criminal penalties under 5 U.S.C. 552a(i)(3).

PART 1213—RELEASE OF INFORMATION TO NEWS AND INFORMATION MEDIA

Sec.

1213.100 Scope of part.
1213.101 Policy.
1213.102 Responsibility.
1213.103 Procedures.
1213.104 Security.

AUTHORITY: Sec. 203(a)(3), National Aeronautics and Space Act of 1958 as amended, 42 U.S.C. 2473(a)(3).

SOURCE: 41 FR 22930, June 8, 1976, unless otherwise noted.

§ 1213.100 Scope of part.

This Part 1213 establishes NASA policy, responsibilities and procedures for the release of information concerning NASA programs and activities to news and information media. The provisions of this part cover the release of information in any form to news and information media. Not included is the release of scientific and technical information to scientific and technical journals and audiences (see NASA Management Issuances in the 2220 and 1392 series).

§ 1213.101 Policy.

(a) Consistent with NASA statutory responsibility (42 U.S.C. 2473(a)(3)), NASA will "* * * provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, * * *"

(b) Release of information concerning NASA activities and the results thereof will be made promptly and completely. Exceptions include that information which may be exempt from disclosure under the "Freedom of Information Act" (5 U.S.C. 552, as amended) (Part 1206) and the "Privacy Act of 1974" (Part 1212).

(c) NASA will respond promptly to queries from the information media and industry, and cooperate with contractors in their release of NASA related informational material including advertising.

(d) NASA officials may participate in interviews and speak for the agency in areas of their assigned responsibility.

§ 1213.102 Responsibility.

(a) The Assistant Administrator for Public Affairs is responsible for the development and overall administration of an integrated NASA-wide public affairs program and determines whether the specific information is to be released. He has designated the Director of the Public Information Division as the functional manager of public information activities. The Director, Public Information Division will:

(1) Direct and coordinate all Headquarters and agency-wide public information activities.

(2) Direct and coordinate all agency-wide news-oriented audio-visual activities.

(b) The public affairs officer assigned to Headquarters program and staff offices (and accountable to the Director of Public Information Division for public information activities only) are responsible for developing plans and coordinating all public information activities covering their respective programs at Headquarters and in the field.

(c) Directors of field installations through their public affairs officers are responsible for initiating and obtaining concurrences for information programs and public releases issued by their respective installations and component installations.

§ 1213.103 Procedures.

(a) *Issuance of news releases.* (1) All Headquarters news releases will be issued by the Public Information Division.

(2) The Director of a field installation through his public affairs officer will issue news releases for which the

field installation is the primary or sole source, and may review material received from its contractors for technical accuracy prior to its public release.

(b) *Coordination and concurrence of news releases*—(1) *General.* All organizational elements of NASA involved in preparing and issuing NASA press releases are responsible for proper coordination and obtaining concurrences and clearances prior to issuance of the news release. Such coordination will be accomplished through the public affairs officers assigned to Headquarters offices. However, nothing contained herein shall be construed to discourage direct contact between the Headquarters News Room and News Room of the field installations.

(2) *Headquarters-field.* (i) Public affairs officers in Headquarters offices will issue releases through the Headquarters News Room only after obtaining all necessary concurrences and clearances. Field installations will obtain clearances from the appropriate Headquarters program or staff office/public affairs officer.

(ii) Headquarters issuance of a news release bearing on a field installation will be coordinated with the installation through the appropriate public affairs officer, Director of Public Information Division or Headquarters News Chief. Where appropriate, the originating office will arrange for a mutually acceptable release time. If circumstances require that Headquarters be the issuing agency for a release for which the primary source is an installation, Headquarters will keep the installation fully informed.

(iii) If it becomes necessary for Headquarters to change, delay or cancel a release proposed for issuance by a field installation, both the installation and the office affected will be notified of the reasons for the action.

(3) *Field-other.* A release originating in one field installation that involves the activities of another installation (including Headquarters) will not be issued until the concurrences of all installations concerned have been obtained. The originating installation is responsible for arranging a mutually acceptable release time.

(4) *Simultaneous release.* Where a release is to be simultaneously issued, whether by Headquarters, a field installation, industry-NASA or university-NASA, it will be so stated on the news release. However, preference is for sole source and a simultaneous release will be used only in exceptional circumstances to be determined by the Headquarters News Chief.

(5) *Date lines.* Out-of-town date lines will not be used on releases issued by Headquarters except in the case of an advance release of a speech text intended for regional distribution in the area where the speech will be delivered.

(6) *Exchange of releases.* Headquarters and field installations will exchange their releases with all News Rooms in the agency. Headquarters will air mail two copies of each release to each field installation, prior to shipping bulk mail for in-house distribution. Field installations will air mail two copies of each of their releases to Headquarters and all other NASA installations. The full text of important releases, regardless of source, which may generate unusual interest and queries shall be teletyped or telephoned to all interested installations (including Headquarters) in advance of release time to enable public information officers to respond intelligently to queries arising locally.

(7) *Daily exchange of public affairs activities schedules.* All field installations will exchange with the appropriate Headquarters public affairs officers their daily schedule of news events and releases. The exchanges will be by wire or telephone. When nothing is scheduled, a negative report is required.

(c) *Interviews.* (1) NASA personnel will respond promptly to requests of media representatives for information or interviews. Interviews will not be monitored nor will NASA personnel so interviewed be required to report the nature of these interviews.

(2) Normally, requests for interviews with NASA officials will be made through the appropriate public affairs office. However, newsmen will have direct access to those NASA officials they seek to interview.

(3) Information given to the press will be on an "on-the-record" basis only and attributable to the person(s)

making the remarks. Any NASA employee providing material to the press will identify himself as the source.

(4) Public information volunteered by a NASA official will be offered to all news media at the same time.

(d) *Audio-visual material.* (1) NASA's central repository of audio-visual material will be available to the information media and to all NASA installations.

(2) Field installations will provide NASA Headquarters with:

(i) Selected prints and originals or duplicate negatives of news-oriented still photographs generated within their respective areas.

(ii) Selected 16 millimeter color motion picture footage (prints) which, in the opinion of the installation, would be appropriate for use as features in programs.

(iii) Audio tapes of significant news developments and other events of historical or public information interest.

(e) *International.* (1) All releases of information involving NASA activities or views affecting another country or an international organization require prior coordination with the Office of International Affairs through the public affairs officer assigned to that office.

(2) NASA field installations and Headquarters offices will report all visits proposed by representatives of foreign news media to the public affairs officer for the Office of International Affairs, NASA Headquarters.

(3) Safeguards intended to control access to classified information, materials, or facilities will not be diminished in providing assistance to foreign news representatives.

§ 1213.104 Security.

Questions regarding security classification will be resolved by the appropriate security classification officer.

PART 1214—SPACE TRANSPORTATION SYSTEM

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Subpart 1214.1—Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

SOURCE: 42 FR 3929, Jan. 21, 1977, unless otherwise noted.

§ 1214.100 Scope.

This Subpart 1214.1 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to non-U.S. Government users (as defined in § 1214.101) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

§ 1214.101 Definition.

For the purpose of this subpart, the term "Non-U.S. Government Users" means:

(a) Private persons or private organizations of the United States, including its territories, the District of Columbia, Panama Canal Zone, and Puerto Rico.

(b) Public organizations of the United States that are not part of the Government of the United States.

(c) Foreign governments or private persons and private or public organizations of foreign countries, except for the government of Canada and governments of the European Space Agency (ESA) member nations participating in Spacelab development when conducting experimental science or experimental applications missions, with no near-term commercial implications, undertaken on behalf of government agencies. The NASA Administrator shall determine the missions which qualify for this exception.

(d) International organizations, except the ESA when conducting experimental science or experimental applications missions with no near-term commercial implications.

(e) Other U.S. Government agencies, Canadian government agencies and the ESA, requesting Shuttle services from NASA in connection with launch and other services being performed by such agencies for users listed in paragraphs (a) through (d) of this section.

§ 1214.102 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation Systems (STS) operations.

(4) Payments with respect to total operations costs shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private. Payments with respect to the use charge shall not be escalated.

(5) Subsequent to the first three years the price will be adjusted annually to insure that aggregate costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single customer.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years, plus a use charge in lieu of depreciation for the use of facilities, support equipment and the Shuttle fleet; however, the price shall not be less than a pro-rata share of forecast aggregate costs averaged over both the first and second phases of the twelve-year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast aggregate costs over both phases to insure that total aggregate costs are recovered over the twelve year period.

(iii) The definition of the costs as specified in this Subpart are set forth in Appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in Appendix B to this subpart.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in Appendix C to this subpart.

(vii) For the user with an experimental new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve-year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety-day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in Appendix D to this subpart.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight a payload delivery date and a firm launch date will be coordinated among the share flight users. This firm launch date will be within the first thirty days of the original ninety-day period. The launch will occur on the firmly scheduled launch date or within a period of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one-year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) Options for future flights will be made available to STS users already contracting for STS launch services. Fixed price options for flights in a given year beyond the three year fixed price period will be made available. For fixed price options, NASA shall be reimbursed the user's flight price compounded at 8 percent per year for each year beyond the fixed price period. The fee for this option is one million dollars in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(2) In order to insure that space will be available for flights in a given future year, scheduled launch options, where NASA will provide a launch during a ninety-day period, will be given to STS users already contracting for flights at a fee of $100,000 in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(3) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a "floating launch date" option. At the time of contract execution, the user will begin to make payments according to a 33-month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(4) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operation. For flights during the second phase, the price will be adjusted on a yearly basis, if necessary, to assure recovery of aggregate costs over a twelve year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money shall be paid to NASA prior to NASA's accepting a lunch reservation. The earnest money required shall be $100,000 per payload; however, if the payload is a small self-contained payload, the earnest money shall be $500.00 per payload. The earnest money shall be applied to the first payment for each payload made by the customer, or shall be retained by NASA if a launch services agreement is not signed.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) Standby payloads. (i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) Reimbursement schedule.

[Percent of price]

Number of months before launch flight is scheduled	Months prior to scheduled launch date					
	33	27	21	15	9	3
33 or more	10	10	17	17	23	23
27-32		21	17	17	23	23
21-26			40	17	23	23
15-20				61	23	23
9-14					90	23
3-8						122

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless the short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted one year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight price according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-availalble basis. NASA shall be reimbursed the dedicated flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect to short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factory-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this paragraph, "adjusted reimbursements" is defined to be reimbursements assuming all shared users are non-U.S. Government.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements*—(1) *Non-standby payloads.* (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postponement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in Appendix E to this subpart.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) *Standby payloads.* (i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in Appendix E to this subpart.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number of months between the date postponement is elected and the new launch date. Short-term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(l) *Cancellations.* (1) Non-standby payloads. Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(2) Standby payloads. (i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

[42 FR 3929, Jan. 21, 1977, as amended at 49 FR 17736, Apr. 26, 1984]

§ 1214.103 Reflight guarantee.

(a) A fee for a reflight guarantee is included in the price charged the user. In consideration of that fee, NASA guarantees one reflight of:

(1) The launch and deployment of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) This reflight guarantee will not be applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

§ 1214.104 Patent and data rights.

(a) NASA will not acquire rights to inventions, patents or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administration has determined that activities may have a significant impact on the public health, safety or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

§ 1214.105 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

§ 1214.106 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

§ 1214.107 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and purlishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller.

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

APPENDIX A—COSTS FOR WHICH NASA SHALL BE REIMBURSED

Additive Costs. All additional costs, both direct and indirect, that the NASA has to incur above those it would otherwise have incurred had it not undertaken to meet non-NASA user requirements.

Total Operations Costs. Total Operations Costs include all direct and indirect costs, excluding costs composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead, and contract administration.

Use Charge. A charge in lieu of depreciation for use of facilities, support equipment and the Shuttle fleet.

Aggregate Costs. Aggregate costs are all reasonable costs which include the sum of the use charge and total operations costs.

APPENDIX B—STANDARD SHUTTLE SERVICES

Two standard mission destinations:
 (1) 160 NM Altitude; 28.5° Inclination.
 (2) 160 NM Altitude; 56.0° Inclination.
One day mission operations
Orbiter flight planning services
Transmission of payload data to compatible receiving stations
A three-man flight crew
On-orbit payload handling
Deployment of a free flyer
NASA support of payload design reviews
Prelaunch payload installation, verification and orbiter compatibility testing

NASA payload safety review

APPENDIX C—OPTIONAL SHUTTLE SERVICES

Revisit and retrieval

Use of Spacelab or other special equipment

Use of Mission Kits to extend basic orbiter capability

Use of Upper Stages

EVA services

Unique payload/orbiter integration and test

Payload mission planning services, other than for launch, deployment and entry phases

Additional time on-orbit

Payload data processing

Launch from Western Test Range

Two standard mission destinations are available from the Western Test Range site:

(1) 160 NM Altitude; 90.0° Inclination.

(2) 160 NM Altitude; 104.0° Inclination.

APPENDIX D—SHARED FLIGHT CHARGE

To calculate the cost of individual payloads transported on a flight shared with other payloads:

(1) Find the load factor for the payload by dividing the payload weight by the Shuttle capability for the desired inclination (Table in Figure 1).

(2) Find the load factor for the payload by dividing the payload length by 60 feet.

(3) Enter the curve (Figure 1) at the higher value obtained from steps 1 and 2 and read the Charge Factor (C_f) from the curve.

(4) Multiply the C_f value times the quoted price per dedicated flight. This will result in the price for the payload flight.

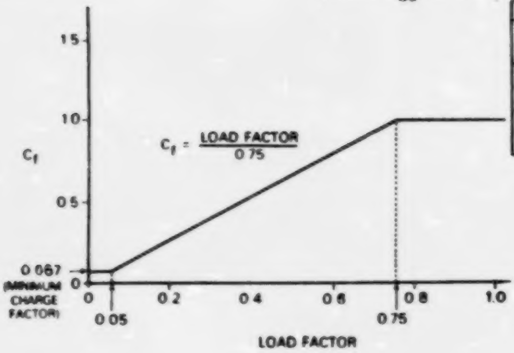
The price for each payload flight (Step 4) entitles the user to be provided a pro-rata share of the facilities available on board the standard Shuttle flight. For example, if the payload factor is 0.5, then the payload is entitled to 50% of power, cooling, and other services provided on the standard flight. Standard services required that exceed the pro-rata share will be an additional charge to the user based on the cost of the service provided.

For purposes of this attachment, payload weight includes a pro-rata share of all special equipment (e.g., spin tables and their controls) needed for the user's mission. Payload length includes a pro-rata share of the clearance length necessary to operate or deploy the payload, including the length of deployment mechanisms.

DETERMINATION OF CHARGE FACTOR (C_f) FOR 160 N.MI

$$\text{PRICE} = C_f \times \text{DEDICATED PRICE}$$

$$\text{LOAD FACTOR} = \left\{ \begin{array}{c} \dfrac{\text{PAYLOAD WEIGHT, LBS}}{\text{SHUTTLE CAPABILITY}} \\[2ex] \dfrac{\text{PAYLOAD LENGTH, FT}}{60} \end{array} \right\} \text{WHICHEVER IS GREATER}$$



SHUTTLE CAPABILITY	
INCLINATION IN DEGREES	WEIGHT IN THOUSANDS OF POUNDS
28.5	65
56	57
90	37
104	30

FIG 1

APPENDIX E—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

(For purposes of this attachment, "adjusted reimbursements" is defined to be reimbursements assuming all users are non-U.S. Government.)

Subpart 1214.2—Reimbursement for Shuttle Services Provided to Civil U.S. Government Users and Foreign Users Who Have Made Substantial Investment in the STS Program

SOURCE: 42 FR 8631, Feb. 11, 1977, unless otherwise noted.

§ 1214.200 Scope.

This Subpart 1214.2 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to users (as defined in § 1214.201) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

§ 1214.201 Definition.

For the purpose of this subpart, the term "users" means:

(a) For all civil U.S. Government agencies who request Shuttle services from NASA, and

(b) Foreign users who have made substantial investment in the STS program, i.e., European Space Agency (ESA), ESA member or observer nations participating in Spacelab development, and Canada, when conducting experimental science or experimental applications missions with no near-term commercial implications.

§ 1214.202 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation System (STS) operations.

(4) Payments shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(5) Subsequent to the first three years, the price will be adjusted annually to insure that total operating costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single user.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years; however, the price shall not be less than a pro-rata share of forecast total operating costs averaged over both the first and second phases of the twelve year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast total operating costs over both phases to insure that total operating costs are recovered over the twelve year period.

(iii) The definition of the costs are specified in this subpart are set forth in Appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in Appendix B to Subpart 1214.1.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in Appendix C to Subpart 1214.1.

(vii) For the user with an experimental, new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight, a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in Appendix D to Subpart 1214.1.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight, a payload delivery date and a firm launch date will be coordinated among the shared flight users. This firm launch date will be within the first thirty days of the original ninety day period. The launch will occur on the firmly scheduled launch date or within a perod of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a "floating launch date" option. At the time of contract execution, the user will begin to make payments according to a 33 month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(2) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operations. For flights during the second phase, the price wil be adjusted on a yearly basis, if necessary, to assure revovery of total operating costs over a twelve-year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money shall be paid to NASA prior to NASA's accepting a launch reservation. The earnest money required shall be $100,000 per payload; however, if the payload is a small self-contained payload, the earnest money shall be $500.00 per payload. The earnest money shall be applied to the first payment for each payload made by the customer, or shall be retained by NASA if a launch services agreement is not signed.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) Standby payloads. (i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) Rembursement schedule.

[Percent of price]

Number of months before launch flight is scheduled	Months prior to scheduled launch date					
	33	27	21	15	9	3
33 months or more	10	10	17	17	23	23
27 to 32 months		21	17	17	23	23
21 to 26 months			40	17	23	23
15 to 20 months				61	23	23
9 to 14 months					90	23
3 to 8 months						

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted on year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight prices according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-available basis. NASA shall be reimbursed the dedication flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factor-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard share flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this paragraph, "adjusted reimbursements" is defined to be reimbursements assuming all shared users are among those defined in § 1214.201.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements*—(1) *Non-standby payloads.* (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postonement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in Appendix B.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) *Standby payloads.* (i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in Appendix B.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number or months between the date postponement is elected and the new launch date. Short term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(l) *Cancellations*—(1) *Non-standby payloads.* Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix B.

(2) *Standby payloads.* (i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix B.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

[42 FR 8631, Feb. 11, 1977, as amended at 49 FR 17736, Apr. 25, 1984]

§ 1214.203 Optional reflight guarantee.

(a) If reflight insurance is purchased from NASA, NASA guarantees one reflight of:

(1) The launch and development of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) Reflight insurance is not applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

§ 1214.204 Patent and data rights.

(a) When accommodating missions under this Subpart, i.e., experimental science or experimental applications missions for ESA, ESA member states or Canada with no near-term commercial implications, NASA will obtain for U.S. Governmental purposes rights to inventions, patents and data resulting from such missions, subject to the user's retention of the rights to first publication of the data for a specified period of time.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

§ 1214.205 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

§ 1214.206 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

§ 1214.207 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and publishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller.

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

APPENDIX A—COSTS FOR WHICH NASA SHALL BE REIMBURSED

Total Operating Costs. Total Operating Costs include all direct and indirect costs, excluding costs of composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead and contract administration.

APPENDIX B—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

For purposes of this attachment, "adjusted reimbursements" is defined to be reimbursements assuming all users are among those defined in § 1214.201.

Subpart 1214.3—Payload Specialists for NASA or NASA-Related Payloads

SOURCE: 43 FR 9790, Mar. 10, 1978, unless otherwise noted.

§ 1214.300 Scope.

This Subpart 1214.3 sets forth NASA's policy on and process for the acquisition and utilization of payload specialists who operate NASA or NASA-related payloads aboard Space Transportation System (STS) flights.

§ 1214.301 Definitions.

(a) *Payload specialist.* A payload specialist is an individual selected to operate assigned payload elements on a specific STS flight or mission.

(b) *NASA or NASA-related payload.* A NASA or NASA-related payload is a specific complement of instruments, space equipment and support hardware, developed by a NASA Program Office or by another party with which NASA has a shared interest, and carried into space to accomplish a mission or discrete activity in space.

(c) *Mission.* The performance of a coherent set of investigations or operations in space to achieve program goals. A single mission might require more than one flight, or more than one mission might be accomplished on a single flight.

(d) *Mission manager.* The mission manager is a NASA official responsible for the implementation of the NASA or NASA-related payload portion of an STS flight(s). The mission manager is designated by the field installation selected to execute the payload portion of the flight(s).

(e) *Mission specialist.* A mission specialist is a career NASA Astronaut skilled in the operation of STS systems related to payload operations and thoroughly familiar with the operational requirements and objectives of the payloads with which the mission specialist will fly. The mission specialist, when designated for a flight, will participate in the planning of the mission and will be responsible for the coordination of overall payload/STS interaction. The mission specialist will direct the allocation of STS and crew resources to the accomplishment of the combined payload objectives during the payload operations phase of the flight in accordance with the approved flight plan.

(f) *Investigator working group (IWG).* An investigator working group (IWG) is a group, generally composed of the investigators, or their representatives, established in accordance with NASA Management Instruction 1150.1, whose primary purpose is facilitating or coordinating the development and execution of the operational plans of an approved NASA program or reporting the progress thereof. The IWG's work is primarily operational in nature; its advisory function, if any, is only incidental.

(g) *Unique criteria.* Generally, unique criteria would include the need for a highly specialized or unusual technical or professional background or the need for instrument operations requiring a highly specialized or unusual technical background that is not likely to be found in the available group of Mission Specialists or cannot be implemented in a reasonable specialist training period.

[43 FR 9790, Mar. 10, 1978, and 45 FR 8001, Feb. 6, 1980]

§ 1214.302 Background.

The Space Transportation System (STS) has been developed to expand the Nation's capabilities to utilize beneficially the space environment in a cost-effective way. It provides opportunity for onboard participation of investigators, their associates or other representatives of the payload community. Such participation by individuals associated with the investigations should enhance the probability of successful achievement of the payload objectives. Therefore, the concept of a payload specialist has been introduced in order to permit the utilization of various specialists as payload operators. The STS will provide these payload specialists with a habitable working environment and support services in such a way as to require a minimum of dedicated space flight training, allowing them to concentrate their efforts on the accomplishment of their scientific or technical objectives.

§ 1214.303 Policy.

NASA policy is to provide individuals associated with space investigations the opportunity to perform as payload specialists aboard STS flights to conduct measurements and observations in pursuance of mission objectives whenever a unique criterion exists which is satisfied by their capabilities or qualities and justifies their presence. Payload Specialists are otherwise selected from the Mission Specialists cadre. The official-in-charge of the sponsoring Program Office will be responsible for verification of the need, technical criteria, and uniqueness for payload specialists. This determination will be coordinated with the Associate Administrator of Space Transportation System Operations and reviewed with the Administrator and Deputy Administrator.

[45 FR 8001, Feb. 6, 1980]

§ 1214.304 Process.

(a) *Determining the need for payload specialist(s).* The Official-in-Charge of the sponsoring Program Office determines the need for a payload specialist(s) to serve aboard an STS flight with the NASA or NASA-related payload. This determination may be made at the time of selection of investigations resulting from an Announcement of Opportunity issued in accordance with NASA Handbook 8030.6, or when the need becomes known during payload/mission development. The policy contained in NASA Management Instruction 3713.2C will be considered.

(b) *Selection of payload specialists.* (1) Except as provided in paragraph (b)(5) of this section, when the Official-in-Charge of the sponsoring Program Office has approved a payload for a mission and/or has otherwise determined a need for a payload specialist(s), the IWG will then commence the selection process.

(2) The IWG will examine the requirements for the selected investigations to determine the number and qualifications of payload specialists and backups that are necessary to support the investigations. Any support which can be provided by the flight crew will be included in these considerations by the IWG.

(3) The IWG members will solicit candidiate payload specialists. The solicitation will require as a minimum that a summary of professional qualifications, a medical history, and the results of the physical examination described in paragraph (b)(3)(iii) of this section be submitted. The IWG will be responsible for:

(i) Establishing professional and operational criteria for payload specialists for specific payloads.

(ii) Screening all candidates against the criteria established.

(iii) Selecting payload specialists from those candidates deemed professionally qualified and who meet the NASA Class III Space Flight Medical Selection Standards. The preselection phases of the medical examiniation will be conducted at various locations by certified examiners approved by the Director, Life Sciences Division, NASA Headquarters.

(4) The Official-in-Charge of the sponsoring Program Office will request that the Director of the Johnson Space Center supply the names and qualifications of appropriate mission specialists who are available to serve as payload specialists for the flight under consideration. These candidates will be considered by the IWG along with all other candidates.

(5) The Official-in-Charge of a sponsoring Program Office is authorized to select a payload specialist(s) as a part of or incident to the acquisition or selection of an investigation(s) for flight. Generally, this authority will be exercised when an IWG has not been convened for this purpose, the investigation(s) is unrelated by nature of its source or objective to the IWG's principal efforts, or other circumstance warrants such approach. In making such selection, the Official-in-Charge of the sponsoring Program Office is to consider the availability of mission specialists as required in paragraph (b)(4) of this section.

(c) *Approval of payload specialists.* The IWG will submit its payload specialist selections through the mission manager to the Official-in-Charge of the sponsoring Program Office for approval. The Official-in-Charge of the sponsoring Program Office will assure appropriate arrangements are made for the assignment of Government employees.

(d) *Preflight activities.* (1)(i) The payload specialist(s) in each assigned position will undergo training required to support the payload elements assigned to that position.

(ii) The IWG is responsible for defining the training necessary for payload elements within its cognizance. The mission manager will assist as necessary in carrying out these IWG defined activities and is responsible for the total integrated payload operations training.

(iii) The Office of Space Transportation Systems (STS) is responsible for training the payload specialists on those Orbiter, Spacelab, Interim Upper Stage, and/or payload support systems which do not vary with the payload being flown; the Office of STS will provide certification to the mission manager of the payload specialists' readiness for flight.

(iv) The mission manager is responsible for verifying that the payload specialists are properly trained for flight including payload and STS requirements.

(2) The medical program for payload specialists will be continued during the preflight period in accordance with the NASA Class III Space Flight Medical Selection Standards.

(3) If during the preflight period the number of payload specialists is reduced to fewer than that desired by the IWG, the IWG will initiate the necessary reprocessing to provide replacements.

(e) *Designation of primary and backup payload specialists (when required).* At an appropriate time designated by the mission manager, the IWG will determine which payload specialists are primary and which are backup. The designations will be forwarded through the mission manager to the Official-in-Charge of the sponsoring Program Office for approval. Consideration will be given to proficiency in both payload operations and STS operations as demonstrated during the training period.

§ 1214.305 Payload specialist responsibilities.

(a) *Operation of payload elements.* The payload specialist will be responsible for the operation of the assigned payload elements. The payload specialist is responsible to the authority of the mission specialist and operates in compliance with mission rules and Payload Operation Control Center directives. Onboard decisions concerning assigned payload operations will be made by the payload specialist. A payload specialist may be designated to resolve conflicts between payload elements and approve such deviations from the flight plan as may arise from equipment failures or STS factors. In the instance of STS factors, the mission specialist will present the available options for decisions by the payload specialist.

(b) *Operation of STS equipment.* The payload specialist will be responsible for knowing how to operate certain Orbiter systems, such as hatches, food and hygiene systems, and for proficiency in those normal and emergency procedures which are required for safe crew operations.

(c) *Relationship with flight crew.* The responsibility for on-orbit management of Orbiter systems and attached payload support systems and for extravehicular activity and payload manipulation with the Remote Manipulator System will rest with the flight crew since extensive training is required for safe and efficient operation of these systems. In general, the flight crew will operate Orbiter systems and standard payload support systems, such as Spacelab and Interim Upper Stage systems; the mission specialist and/or payload specialists will operate payload support systems which have an extensive interface with the payload.

§ 1214.306 Payload specialist relationship with sponsoring institutions.

A payload specialist who is not a U.S. Government employee must have entered into a contractual or other arrangement establishing an obligatory relationship with an institution participating in the payload prior to entering into training at a NASA installation or NASA designated location. It is not the intention of NASA to enter into any direct contractual or other arrangement with payload specialists. Any exception must be approved by the Official-in-Charge of the sponsoring Program Office with the concurrence of the NASA General Counsel and the Director of Procurement.

Subpart 1214.5—Space Transportation System Personnel Reliability Program

AUTHORITY: The National Aeronautics and Space Act of 1958, as amended, 72 Stat. 426, 42 U.S.C. 2451 et seq.

SOURCE: 44 FR 39384, July 6, 1979, unless otherwise noted.

§ 1214.500 Scope.

This Subpart 1214.5 establishes a program designed to ensure that personnel assigned to mission-critical positions in connection with the Space Transportation System meet established screening requirements. This program supplements the DOD and NASA program requirements for security clearances.

§ 1214.501 Applicability.

(a) This regulation applies to NASA Headquarters and field installations whose personnel are engaged in activities that are critical to the success of Space Transportation missions.

(b) The provisions of the regulation apply to all personnel assigned to mission-critical positions in connection with the Space Transportation System.

(c) This regulation does *not* include flight crew or payload specialists when covered by other NASA Management Instructions which have equivalent screening requirements.

§ 1214.502 Definitions.

(a) *Mission-critical position.* Any position requiring physical access to the vehicle, or command capability through the Launch Processing System or the Mission Control Center as well as any other positions wherein the concerned NASA installation determines that faulty, negligent or malicious actions could result in a program contingency.

(b) *Two-person concept.* The practice of requiring the presence of two authorized persons, each capable of detecting incorrect or unauthorized procedures, during the performance of tasks or operations vital to the Space Shuttle.

(c) *Medical authority.* A NASA civil service or contract physician responsible for reviewing medical records, providing results of medical evaluations and interpreting evaluations as they relate to reliable performance of mission-critical duties.

(d) *Program contingency.* Any program-related failure, accident or incident that significantly delays or jeopardizes the program or a mission, prevents accomplishment of a major mission objective or terminates a mission prematurely.

§ 1214.503 Policy.

(a) The Space Transportation System is a national resource providing a capability to support a wide range of scientific, applications, commercial, defense and international uses. Since it will contribute significantly to ensuring a scientifically, technologically and economically strong and secure nation, the interest of the national security, as well as program reliability, operational and safety considerations require that extraordinary measures be taken to provide for the protection of the system.

(b) Measures to ensure this protection are:

(1) Special physical security provisions,

(2) Two-person concept of operations in connection with selected, most vital pre-launch and post-launch tasks, and

(3) Procedures to ensure that personnel assigned to perform mission-critical duties meet specified screening requirements.

§ 1214.504 Screening requirements.

(a) Only those persons shall be assigned to, employed in, or retained in mission-critical positions who have been determined to be competent and reliable in the performance of their assigned duties pursuant to the screening requirements of this section, and whose assignment, employment or retention is clearly consistent with optimum Space Transportation System safety and security.

(b) Determinations of acceptability for assignments to mission-critical positions shall be made on the basis of the following criteria:

(1) Ability to perform mission-critical duties as evidenced by performance during training, simulations and on the job.

(2) An initial medical evaluation of the individual and as necessary thereafter, but not less than every two years, to ensure health is adequate for reliable performance of mission-critical duties. The medical evaluation by competent medical authority may be made by:

(i) Medical history and records which are sufficiently comprehensive and current for the purpose; or

(ii) An appropriate medical examination.

(3) Verification of the existence of a current personnel security clearance at the level commensurate with the classification of the information required in the position.

(4) A review of the results of a National Agency Check (including a name check of the FBI fingerprint records) completed within the past five years. When the National Agency Check indicates that a more extensive investigation has been completed, the results of that investigation will also be reviewed.

(5) Local agency checks as appropriate.

§ 1214.505 Program implementation.

(a) Each NASA installation to which this regulation is applicable will identify positions occupied by personnel assigned to mission-critical duties. The number of positions so identified must be the absolute minimum necessary to meet operational requirements. The unnecessary designation of such positions not only increases the costs required to administer the program, but also reduces its total effectiveness.

(b) Each NASA installation to which this regulation is applicable will establish:

(1) A *certification system* acceptable to the Associate Administrator for Space Transportation Systems to ensure that the screening requirements of this instruction are met for designated mission-critical positions. The certification system is to provide for the issuance of a NASA identification for each authorized individual who passes the prescribed requirements; and

(2) A *management review process* to validate the objectivity of individual certification determinations and ensure that reassignments or other personnel actions taken pursuant to this regulation are duly processed under the appropriate personnel policies and procedures applicable to each individual; and

(3) Appropriate procedures for review of certification determinations which shall be provided to affected individuals.

(c) The launch centers, in conjunction with other involved NASA centers, contractors or agencies, will identify the vital pre-launch and post-launch tasks where the two-person concept of operations should be used.

(d) The full intent of the provisions of this regulation will be incorporated in any contract under which contractor employees will be assigned to mission-critical positions. An appropriate procurement provision is being separately prepared for this area.

(e) NASA Headquarters (OSTS) will periodically review the program to assure reasonable uniformity in implementation procedures and the identification of mission-critical positions.

Subpart 1214.6—Mementos Aboard Space Shuttle Flights

AUTHORITY: Pub. L. 85-568, 72 Stat. 426 (42 U.S.C. 2473(c)).

SOURCE: 49 FR 18287, Apr. 30, 1984, unless otherwise noted.

§ 1214.600 Scope.

This subpart establishes policy, procedures, and responsibilities for selecting, approving, packing, storing, and disposing of mementos carried on Space Shuttle flights.

§ 1214.601 Definitions.

(a) *Mementos.* Flags, patches, insignia, medallions, minor graphics, and similar items of little commercial value, especially suited for display by the individuals or groups to whom they have been presented.

(b) *Official flight kit (OFK).* A container reserved for carrying official mementos of NASA and other organizations aboard Space Shuttle flights. No personal items will be carried in the OFK.

(c) *Personal preference kit (PPK).* A container separately assigned to each person accompanying a Space Shuttle flight for carrying personal mementos during the flight.

§ 1214.602 Policy.

(a) *Premise.* Mementos are welcome aboard Space Shuttle flights. However, they are flown as a courtesy—not as an entitlement. The Administrator is free to make exceptions to this accommodation without explanation. Moreover, mementos are ballast not payload. They can be reduced or eliminated by the Manager, National Space Transportation Systems Program, Johnson Space Center, for weight, volume, or other technical reasons without reference to higher authority.

(b) *Constraints.* Mementos to be carried on Space Shuttle flights must be approved by the Administrator and stowed only in an OFK or a PPK. Mementos will not be carried within payload containers, including get-away specials.

(c) *Economic gain.* Items carried in an OFK or a PPK will not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fund-raising purpose. Items will not be approved for flight that have a known or suspected commercial value, such as philatelic covers and coins, or that by their nature lend themselves to exploitation by the recipients, or create problems with respect to good taste.

§ 1214.603 Official flight kit.

(a) *Purpose.* The OFK enables NASA and other organizations (representing launch service customers, researchers, and schools) to utilize mementos as awards and commendations, or to preserve them in musuems or archives. "Other organizations," as used in this paragraph, includes the aerospace industry, the academic community, and the counterpart institutions of friendly foreign countries.

(b) *Limitations.* U.S. national flags will not be flown as mementos except for U.S. Government sponsors.

(c) *Approval of contents.* At least 60 days before the launch of a Space Shuttle flight, a representative of each organization desiring mementos to be carried on the flight must submit an Official Flight Kit and Personal Preference Kit Request, NASA Form 1614, through the cognizant NASA Headquarters Program or Staff Office (e.g., foreign requests through the International Affairs Division, military requests through the DOD Affairs Division, payload requests through the NASA sponsor, and commercial launch service customer requests through the Associate Administrator for Space Flight) to the Associate Director, Johnson Space Center. The Director, Johnson Space Center, will compile the requests and forward them to the Associate Administrator for Space Flight with advice as to whether they can be accommodated within the weight and volume limitations of the specific mission. The Associate Administrator for Space Flight will recommend to the Administrator a final list of items to be included in the OFK.

§ 1214.604 Personal preference kit.

(a) *Purpose.* The PPK enables persons accompanying Space Shuttle flights to carry personal items for use as mementos. Only those individuals actually accompanying such flights may request authorization to carry personal items. These items must be carried in individually assigned PPK's.

(b) *Limitations.* The contents of a PPK must be limited to 20 separate items weighing a combined total of 1.5 pounds (680 grams). No more than one article may be given to any one individual. Increases in these limitations will be authorized only by the Administrator.

(c) *Approval of contents.* At least 60 days before the scheduled launch of a Space Shuttle flight, each person assigned to the flight who desires to carry items in a PPK must submit an Official Flight Kit and Personal Preference Kit Request, NASA Form 1614, to the Associate Director, Johnson Space Center. The Associate Director, Johnson Space Center, will review the requests for compliance with this subpart and submit them with weight data through supervisory channels to the Associate Administrator for Space Flight who will similarly review the requests and forward them with recommendations to the Administrator for final approval. In conducting this review, the Associate Administrator for Space Flight will staff the requests of payload specialists with the Program Associate Administrators responsible for payload management during the mission, and the requests of passengers (everyone who is not a commander, pilot, mission specialist, or payload specialist) with the Associate Administrator for External Relations. Upon receipt of the Administrator's action, the Associate Administrator for Space Flight will provide a copy of each approved request to the requester, the General Counsel, and the Director, Johnson Space Center.

§ 1214.605 Preflight packing and storing.

(a) Items intended for inclusion in OFK's or PPK's must arrive at the Johnson Space Center at least 30 days prior to the flights on which they are scheduled in order for them to be listed on the cargo manifest, packaged, weighed, and stowed aboard the orbiter. Items which do not arrive within the 30-day limit will not be carried on the flight; therefore, they must arrive at the Johnson Space Center even if the Administrator's approval is still pending. Items which do not receive the Administrator's approval will be returned to the persons who submitted them.

(b) The Associate Director, Johnson Space Center, will:

(1) Pack, seal, and weigh the OFK's and PPK's according to the requests approved by the Administrator.

(2) Secure the kits while awaiting the launches on which they are manifested.

§ 1214.606 Postflight disposition.

The Associate Director, Johnson Space Center, will:

(a) Remove and safeguard all the kits following flight;

(b) Return the contents of the PPK's to the persons who submitted them; and

(c) Forward the contents of the OFK to the Administrator through supervisory channels for disposition.

§ 1214.607 Media and public inquiries.

(a) *Official flight kit.* Information on the contents of OFK's will be routinely released to the media and public upon their request, but only after the contents have been approved by the Administrator.

(b) *Personal preference kit.* Information on the contents of PPK's will be routinely released to the media and to the public upon their request immediately following postflight inventory.

(c) *Responsibility for release of information.* The Director of Public Affairs, Johnson Space Center, is responsible for the prompt release of information on OFK and PPK contents.

§ 1214.608 Safety requirements.

The contents of OFK's and PPK's must meet the requirements set forth in NASA Handbook 1700.7, "Safety Policy and Requirements for Payloads Using the Space Transportation System (STS)."

§ 1214.609 Loss or theft.

(a) *Responsibility.* The National Aeronautics and Space Administration will not be responsible for the loss or theft of, or damage to, items carried in OFK's or PPK's.

(b) *Report of loss or theft.* Any person who learns that an item contained in an OFK or a PPK is missing shall immediately report the loss to the Johnson Space Center Security Officer and the NASA Inspector General.

§ 1214.610 Violations.

Any item carried in violation of the requirements of this subpart shall become the property of the U.S. Government, subject to applicable Federal laws and regulations, and the violator may be subject to disciplinary action which could include being permanently prohibited from flying aboard the Space Shuttle or any other manned spacecraft of the National Aeronautics and Space Administration.

Subpart 1214.7—The Authority of the Space Transportation System (STS) Commander

AUTHORITY: Pub. L. 85-588, 72 Stat. 426 (42 U.S.C. 2473, 2455; 18 U.S.C. 799); Art. VIII, TIAS 6347 (18 U.S.T. 2410).

SOURCE: 45 FR 14845, Mar. 7, 1980, unless otherwise noted.

§ 1214.700 Scope.

This subpart establishes the authority of the STS commander to enforce order and discipline during all flight phases of an STS flight to take whatever action in his/her judgment is necessary for the protection, safety, and well-being of all personnel and on-board equipment, including the STS elements and payloads. During the final launch countdown, following crew ingress, the STS commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff, the STS commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

§ 1214.701 Definitions.

(a) *STS Elements* consists of the Orbiter, an External Tank, two Solid Rocket Boosters, Spacelab, Upper Stage Boosters (Solid Spinning Upper Stage and Interim Upper Stages) and others as specified in NASA Management Instruction 8040.9.

(b) The *flight crew* consists of the commander, pilot, and mission specialist(s).

(c) A *flight* is the period from launch to landing of a Space Shuttle—a single round trip. (In the case of a forced landing the STS commander's authority continues until a competent authority takes over the responsibility for the Orbiter and for the persons and property aboard.)

(d) The *flight-phases* consist of launch, in orbit, deorbit, entry, landing, and postlanding.

(e) A *payload* is a specific complement of instruments, space equipment, and support hardware/software carried into space to accomplish a scientific mission or discrete activity.

(f) *Personnel on board* refers to those astronauts or other persons actually in the Orbiter or Spacelab during any flight phase of an STS flight (including any persons who may have transferred from another vehicle) and including any persons performing extra-vehicular activity associated with the mission.

§ 1214.702 Authority and responsibility of the STS commander.

(a) During all flight phases of an STS flight, the STS commander shall have the absolute authority to take whatever action is in his/her discretion necessary to (1) enforce order and discipline, (2) provide for the safety and well being of all personnel on board, and (3) provide for the protection of the STS elements and any payload carried or serviced by the STS. The commander shall have authority throughout the flight to use any reasonable and necessary means, including the use of physical force, to achieve this end.

(b) The authority of the commander extends to any and all personnel on board the Orbiter including Federal officers and employees and all other persons whether or not they are U.S. nationals.

(c) The authority of the commander extends to all STS elements and payloads.

(d) The commander may, when he/she deems such action to be necessary for the safety of the STS elements and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

§ 1214.703 Chain of command.

(a) The *Commander* is a career NASA astronaut who has been designated to serve as commander on a particular flight, and who shall have the authority and responsibility described in § 1214.702 of this subpart. Under normal flight conditions (other than emergencies or when otherwise designated) the STS commander is responsible to the Flight Director, Johnson Space Center, Houston, TX.

(b) The *pilot* is a career NASA astronaut who has been designated to serve as the pilot on a particular flight and is second in command of the flight. If the commander is unable to carry out the requirements of this subpart, then the pilot shall succeed to the duties and authority of the commander.

(c) Before each flight, the other flight crew members (Mission Specialists) will be designated by the Director of Flight Operations, Johnson Space Center, Houston, TX, in the order in which they will assume the responsibilities and authority of the commander under this subpart in the event that the commander and pilot are both not able to carry out their duties.

(d) The determinations, if any, that a crew member in the chain of command is not able to carry out his or her command duties and is therefore to be relieved of command, and that another crew member in the chain of command is to succeed to the responsibilities and authority of the Commander, will be made by the Director of the Johnson Space Center.

[45 FR 14845, Mar. 7, 1980, as amended at 47 FR 3095, Jan. 22, 1982]

§ 1214.704 Violations.

(a) All personnel on board an STS flight are subject to the authority of the commander and shall conform to his/her orders and direction as authorized by this subpart.

(b) This regulation is a regulation within the meaning of 18 U.S.C. 799, and whoever willfully violates, attempts to violate, or conspires to violate any provision of this subpart or any order or direction issued under this subpart shall be fined not more than $5,000 or imprisoned not more than 1 year, or both.

Subpart 1214.8—Reimbursement for Spacelab Services

Source: 50 FR 30809, July 30, 1985, unless otherwise noted.

§ 1214.800 Scope.

This Subpart 1214.8 establishes the special reimbursement policy for Spacelab services provided to Space Transportation System (STS) customers governed by the provisions of Subpart 1214.1 or Subpart 1214.2. It applies to flights occurring in the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988). The following five types of Spacelab flights are available to accommodate payload requirements:

(a) Dedicated-Shuttle Spacelab flight [Ref. § 1214.804(e)].

(b) Dedicated-pallet flight [Ref. § 1214.804(f)].

(c) Dedicated-FMDM/MPESS (flexible multiplexer-demultiplexer/multipurpose experiment support structure) flight [Ref. § 1214.804(f)].

(d) Complete-pallet flight [Ref. § 1214.804(g)].

(e) Shared-element flight [Ref. § 1214.804(h)].

§ 1214.801 Definitions.

(a) *Shuttle policy*. The appropriate Subpart (1214.1 or 1214.2) governing use of the Shuttle. Determinaltion of the appropriate Subpart for each customer shall be made by reference to § 1214.101 and § 1214.201.

(b) *Spacelab elements*. Pallets (3-meter segments), pressurized modules (long or short), and the FMDM/MPESS (1-meter cross-bay structure), all as maintained in the NASA-approved Space lab configuration.

(c) *Standard flight price*. The price for standard Shuttle and standard Spacelab services provided. If a customer elects not to use a portion of the standard services, the standard flight price shall not be affected.

(d) *Shuttle load factor*. The parameter used to compute the customer's pro rata share of Shuttle services and used to compute the Shuttle charge factor. Means of computing this parameter are defined in § 1214.813.

(e) *Spacelab load fraction*. The parameter used to compute the customer's pro rata share of each element's services and used to compute the element charge factor. Means of computing this parameter are defined in § 1214.813.

(f) *Shuttle charge factor and element charge factor*. Parameters used in computation of the customer's flight price. Means of computing these parameters are defined in § 1214.813.

(g) *Dedicated flight price for Spacelab missions*. (1) The single-shift operation dedicated flight price for Spacelab missions is identical to the Shuttle dedicated flight price as defined in the Shuttle policy.

(2) The two-shift operation dedicated flight price for Spacelab missions is the sum of:

(i) The Shuttle dedicated flight price as defined in the Shuttle policy.

(ii) The standard price for additional services required to support a second shift of on-orbit operations.

§ 1214.802 Relationship to Shuttle policy.

Except as specifically noted, the provisions of the Shuttle policy also apply to Spacelab payloads. Although some language in the Shuttle policy is Shuttle-specific, it is the intent of this Subpart 1214.8 that the Shuttle policy be applied to Spacelab also, including the policy on patent and data rights. However, in the event of any inconsistencies in the policies, the Spacelab policy will govern with respect to Spacelab services.

§ 1214.803 Reimbursement policy.

(a) *Reimbursement basis.* (1) This policy is established for the second phase of STS operations (U.S. Government fiscal years 1986, 1987, and 1988).

(2) *Standard flight price.* During this phase, customers covered by Subpart 1214.1 or Subpart 1214.2 shall reimburse NASA for standard Spacelab services an amount which is a pro rata share of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission.

(ii) The standard price for use of the selected Spacelab elements during the second phase of STS operations.

(3) The price shall be held constant for flights during this phase of STS operations.

(4) Reimbursement policies for subsequent phases of STS operations will be developed after NASA has obtained more operational experience.

(b) *Escalation.* Payments shall be escalated in accordance with the Shuttle policy.

(c) Customers shall reimburse NASA an amount which is the sum of the customer's standard flight price and the price for all optional services provided.

(d) *Earnest money.* For those customers required to pay earnest money by the Shuttle policy, the total earnest money payment per payload for Spacelab payloads (including Shuttle services) shall be the lesser of $150,000 or 10% of the customer's estimated standard flight price. Earnest money will be applied to the first payment for standard services made for each payload by the customer or will be retained by NASA if a Launch Services Agreement is not signed.

§ 1214.804 Services, pricing basis, and other considerations.

(a) *Mandatory use of dedicated-Shuttle Spacelab flight.* (1) Customers shall be required to fly under the provisions of paragraph (e) of this section if the customer requires exclusive use of any of the following:

(i) Pressurized module (long or short).

(ii) Three pallets in the "1+1+1" configuration.

(iii) Four pallets in the "2+2" configuration.

(2) In the cases cited in paragraph (a)(1) of this section, if the customer requests, NASA will attempt to find compatible sharees to fly with the customer's payload. If NASA is successful, the customer's Shuttle standard flight price shall be the greater of:

(i) The appropriate dedicated flight price for the customer's Spacelab mission less adjusted reimbursements (as defined in the Shuttle policy) from sharees actually flown.

(ii) The computed shared-flight Spacelab flight price for the customer's payload.

(b) *Apportionment and assignment of services.* Subject to NASA approval, a customer contracting for a Spacelab flight shall be permitted to apportion and assign services under the provisions of the Shuttle policy.

(c) *Postponement and termination.* (1) A customer may postpone the flight of a Spacelab payload one time with no additional charge if postponement occurs more than 18 months before the scheduled launch date.

(2) Postponement or termination fees for Spacelab payloads shall consist of the sum of:

(i) A fee for Shuttle transporation.

(ii) A fee for use of the Spacelab elements.

(3) *Shuttle transportation fee.* Customers shall be governed by the provisions of the Shuttle policy with the following exception. When computing occupancy fees for shared-element payloads, the "adjusted reimbursements from other customers" shall be defined as the adjusted reimbursements from those customers who subsequently contract for the use of the element being shared.

(4) *Spacelab use fee.* The postponement and termination fees for use of the Spacelab elements are computed as a percentage of the customer's price for use of the Spacelab elements and shall be based on the table below. When postponement or termination occurs less than 18 months before launch, the fees shall be computed by linear interpolation using the points provided.

Time when postponement or termination occurs, months before scheduled launch date	Fee for use of Spacelab element(s), percent of price for use of element(s)	
	Postponement	Termination
Dedicated Flights, Dedicated Elements, and Dedicated FMDM/MPESS		
0	75	100
3	60	85
12	14	20
18	5	10
More than 18	5	10
Complete Pallets and Shared Elements		
Less than 8	95	100
8	95	100
9	32	95
12	18	80
18	5	10
More than 18	5	10

(5) At the time of signing of the Launch Services Agreement, NASA shall define a payload removal cutoff date (relative to the launch date) for each Spacelab payload to be flown on a shared flight. A customer may still postpone or terminate a flight after the payload's cutoff date; however, NASA shall not be required to remove the payload before flight.

(d) *Minor delays.* The minor delay provisions of the Shuttle policy shall apply only to those Spacelab payloads whose Shuttle load factor is equal to or greater than 0.05.

(e) *Dedicated-Shuttle Spacelab flight.* (1) A dedicated-Shuttle Spacelab flight is a Shuttle flight sold to a single customer who is entitled to select the Spacelab elements used on the flight.

(2) In addition to the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated-Shuttle Spacelab flights and form the basis for the standard flight price:

(i) Use of the full standard services of the Shuttle and the Spacelab elements selected.

(ii) One day of one-shift on-orbit operations.

(iii) Standard mission destinations as defined in the Shuttle policy.

(iv) Launch within a prenegotiated 90-day period in accordance with the dedicated flight scheduling provisions of the Shuttle policy.

(v) The available payload operations time of two NASA-furnished mission specialists.

(3) Customers contracting for a dedicated-Shuttle Spacelab flight shall reimburse NASA an amount which is the sum of:

(i) The one-shift operation dedicated flight price for a 1-day Spacelab mission.

(ii) The price for the use of all Spacelab elements used (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(f) *Dedicated 3-meter pallets and dedicated FMDM/MPESS.* (1) A dedicated pallet (or a dedicated FMDM/MPESS) is one which is sold to a single customer and which includes all Spacelab hardware necessary to permit it to be flown on any shared Shuttle flight as an autonomous payload (e.g., a dedicated 3-meter pallets may either be supplied with its own exclusive igloo or may fly without an igloo if it requires only standard Shuttle services).

(2) In addition to a pro rata share of the standard service listed in paragraph (i) of this section, the following standard services are provided to customers of dedicated pallets (or dedicated FMDM/MPESS) and form the basis for establishing the standard flight price:

(i) A pro rata share of the Shuttle services normally provided, where the basis for proration is the customer's Shuttle load factor as defined in § 1214.813(d)(1) for dedicated pallets and in § 1214.813(e)(2) for dedicated FMDM/MPESS.

(ii) The exclusive services of the pallet (or FMDM/MPESS) and all Spacelab hardware provided to support the pallet (or FMDM/MPESS).

(iii) One day of one-shift on-orbit operations.

(iv) Launch to the standard mission destination of 160 nmi, 28.5° as defined in the Shuttle policy.

(v) Launch within a prenegotiated 90-day period in accordance with the shared-flight scheduling provisions of the Shuttle policy.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for a dedicated pallet (or FMDM/MPESS) flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the one-shift-operation dedicated flight price of a 1-day Spacelab mission.

(ii) The price for the use of the pallet (or FMDM/MPESS) selected (including all necessary mission-independent Spacelab equipment).

(iii) The price for all optional services provided.

(g) *Complete pallet.* (1) A complete Spacelab pallet is one which is sold to a single customer but flies with other Spacelab elements on a NASA or NASA-designated Spacelab flight and shares the common standard Spacelab services, e.g., shares an igloo with other pallets.

(2) In addition to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of complete pallets and form the basis for the standard flight price.

(i) The pallet's pro rata share of standard Shuttle services, where the basis of proration shall be the customer's Shuttle load factor as defined in § 1214.813(f)(1).

(ii) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor.

(iii) Mission destination selected by NASA in consultation with the customer.

(iv) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(v) Launch date established by NASA.

(vi) A pro rata share of the on-orbit payload operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(vii) Use of the entire volume above a pallet.

(3) Users contracting for complete pallet flights shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift-operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day complete-pallet mission is the sum of the dedicated flight price for a 1-day two-shift mission and the charge for 6 extra days of two-shift on-obit operation.

(ii) The price for the use of a complete pallet, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(h) *Shared element.* (1) A shared element is a Spacelab pallet or module which:

(i) Is shared by two or more customers on a NASA-designated Spacelab flight.

(ii) Shares common standard Spacelab services with other Spacelab elements on the same flight.

(2) In aditional to a pro rata share of the standard services listed in paragraph (i) of this section, the following standard services are provided to customers of shared elements and form the basis for the standard flight price:

(i) For shared pallets, a pro rata share of the standard services provided by a pallet. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(i).

(ii) For shared modules, a pro rata share of the standard services provided by a long module flown on a dedicated-Shuttle Spacelab flight. The basis of proration shall be the customer's Spacelab load fraction as defined in § 1214.813(g)(1)(ii). The type of pressurized module actually used to meet a customer's requirement for a shared module shall be determined by NASA subsequent to contract negotiations.

(iii) A pro rata share of the element's share of standard Shuttle services, where the basis for proration shall be the customer's Spacelab load fraction.

(iv) A pro rata share of 7 days of two-shift on-orbit operations, where the basis of proration shall be the customer's Shuttle load factor as defined in § 1214.813(g)(1).

(v) Mission destination selected by NASA in consultation with the customer.

(vi) Assignment, with the customer's concurrence, to a Spacelab flight designated by NASA.

(vii) Launch date established by NASA.

(viii) A pro rata share of the on-orbit operations time of two NASA-furnished mission specialists, where the basis of proration shall be the customer's Shuttle load factor.

(3) Customers contracting for shared-element flight shall reimburse NASA an amount which is the sum of:

(i) The product of the customer's Shuttle charge factor and the two-shift operation dedicated flight price of a 7-day Spacelab mission. The dedicated flight price for a 7-day shared-element mission is the sum of the dedicated flight price for a 1-day two-shift-mission and the charge for 6 extra days of two-shift on-orbit operations.

(ii) The product of the customer's element charge factor and the price for the use of the Spacelab element being used, including all necessary mission-independent Spacelab equipment.

(iii) The price for all optional services provided.

(i) *Common standard Spacelab services.* The following standard Spacelab services are common to all Spacelab flights:

(1) Use of Shuttle[1] and Spacelab hardware.

(2) Spacelab interface analysis.

(3) Kennedy Space Center (KSC) launch.[1]

(4) A five-person NASA flight crew consisting of commander, two pilots, and two mission specialists.

(5) Accommodations for a five-person flight crew.

(6) Prelaunch integration and interface verification of preassembled racks and pallets (Levels III, II, and I for NASA-furnished Spacelab hardware; Level I only for customer-furnished Spacelab hardware).

(7) Shuttle[1] and Spacelab flight planning.

(8) Payload electrical power.

(9) Payload environmental control.

(10) On-board data acquisition and processing services.

(11) Transmission of data to a NASA-designed monitoring and control facility via the basic STS Operational Instrumentation (OI) telemetry system.

(12) Use of NASA-furnished standard payload monitoring and control facilities.

(13) Voice communications between personnel operating the customer's payload and a NASA-designated payload monitoring and control facility.

(14) NASA payload safety review.[1]

(15) NASA support of payload design reviews.[1]

(j) *Typical optional Spacelab services.* The following are typical optional Spacelab services:

(1) Use of special payload support equipment, e.g., instrument pointing system.

(2) Vandenberg Air Force Base (VAFB) launch.

(3) Nonstandard mission destination.

(4) Additional time on orbit.

(5) Mission-independent training, use of, and accommodations for all flight personnel in excess of five.

(6) Mission-dependent training of all NASA-furnished personnel and backups.

(7) Analytical and/or hands-on integration (and de-integration) of the customer's payload into racks and/or onto pallets.

(8) Unique integration or testing requirements.

(9) Additional resources beyond the customer's pro rata share.

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[1] Typical standard Shuttle services repeated for clarity.

(10) Additional experiment time or crew time beyond the customer's pro rata share.

(11) Special access to and/or operation of payloads.

(12) Customer unique requirements for: software development for the Command and Data Management Subsystem (CDMS) onboard computer, configuration of the Payload Operations Control Center (POCC), and/or CDMS utilized during KSC ground processing.

(13) Extravehicular Activity (EVA) services.

(14) Payload flight planning services.

(15) Transmission of Spacelab data contained in the STS OI telemetry link to a location other than a NASA-designated monitoring and control facility.

(16) Transmission of Spacelab data not contained in the STS OI telemetry link.

(17) Level III and/or Level II integration of customer-furnished Spacelab hardware.

(k) *Options.* The provisions of §§ 1214.102(e) and 1214.202(e) do not apply to Spacelab payloads.

§ 1214.805 Unforeseen customer delay.

Should an unforeseen customer payload problem pose a threat of delay to the Shuttle launch schedule or critical off-line activities, NASA shall, if requested by the customer, make all reasonable efforts to prevent a delay, contingent on the availability of facilities, equipment, and personnel. In requesting NASA to make such special efforts, the customer shall agree to reimburse NASA the estimated additional cost incurred.

§ 1214.806 Premature termination of Spacelab flights.

If a dedicated-Shuttle Spacelab flight, a dedicated-pallet flight, or dedicated-FMDM/MPESS flight is prematurely terminated, NASA shall refund the optional services charges for planned, but unused, extra days on orbit. If a complete pallet or shared-element flight is prematurely terminated, NASA shall refund a pro rata share of the charges for planned, but unused, extra days on orbit to customers whose payload operations are, in NASA's judgment, adversely affected by such premature termination. The basis for proration shall be the customers' Shuttle load factor.

§ 1214.807 Exceptional payloads.

Customers whose payloads qualify under the NASA Exceptional Program Selection Process shall reimburse NASA for Spacelab and Shuttle services on the basis indicated in the Shuttle policy.

§ 1214.808 Standby payloads.

The standby payload provisions of the Shuttle policy do not apply to Spacelab flights.

§ 1214.809 Short-term call-up and accelerated launch.

The short-term call-up and accelerated launch provisions of the Shuttle policy normally are not offered to Spacelab customers. NASA will negotiate any such customer requirements on an individual basis.

§ 1214.810 Integration of payloads.

(a) The customer shall bear the cost of performing the following typical Spacelab-payload mission management functions:

(1) Analytical design of the mission.

(2) Generation of mission requirements and their documentation in the Payload Integration Plan (PIP).

(3) Provision of mission unique training and payload specialists (if appropriate).

(4) Physical integration of experiments into racks and/or onto pallets.

(5) Provision of payload unique software for use during ground processing, on orbit, or in POCC operations.

(6) Supporting operations.

(7) Assuring the mission is safe.

(b) All physical integration (and deintegration) of payloads into racks and/or onto pallets will normally be performed at KSC by NASA. When the customer provides Spacelab elements, these physical integration activities may be done by the customer at a location chosen by the customer.

(c) With the exception of the restrictions noted in paragraph (b) of this section, customers contracting for dedicated-Shuttle and dedicated-pallet flights may perform the Spacelab-payload mission management functions defined in paragraph (a) of this section. NASA will assist customers in the performance of these functions, if requested. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(d) For complete pallets or shared elements, NASA will normally perform the Spacelab-payload mission management functions listed in paragraph (a) of this section. Charges for this service will be based on estimated actual costs, or actual costs where appropriate, and will be in addition to the price for standard services.

(e) Integration of payload entities mentioned in paragraphs (b)-(d) of this section with NAS-furnished Spacelab support systems and with the Shuttle shall be performed by NASA as a standard service for all payloads flown on customer-furnished Spacelab elements. Customers shall be available to participate as required by NASA in these levels of integration. Customer equipment shall be operated only to the extent necessary for interface verification. Customers requiring additional payload operation after delivery of the payload to NASA shall negotiate such operation as an optional service.

§ 1214.811 Reflight guarantee.

(a) During the second phase of STS operations, there is no additional reflight premium for those shared-flight Spacelab payloads which can be accommodated on a standard Shuttle launch to 160 nmi, 28.5° as defined in the Shuttle policy and all dedicated-flight Spacelab payloads.

(b) NASA and the customer may negotiate appropriate reflight provisions (e.g., scheduling, reflight premiums) for payloads not covered by paragraph (a) of this section. Otherwise, no reflight services shall be provided.

(c) Reflight guarantees, if provided, must cover the customer's entire payload.

(d) Payloads covered by reflight guarantees shall be entitled to a reflight with no charge for standard Spacelab and Shuttle services if both the following occur:

(1) Through no fault of the customer or defect in the customer's payload, Spacelab systems (i.e., data, power, and cooling) are not within nominal specifications, as measured by NASA at normal Spacelab monitoring points, at the time of first turn-on of the customer's payload, all as defined in the Launch Services Agreement.

(2) The customer's mission objective is not achieved solely as a direct result of the occurrence, at the time of first turn-on of the customer's payload, of events described in paragraph (d)(1) of this section.

(e) If more than one reflight is required, no additional reflight premium shall be charged.

(f) If a payload being reflown was not initially covered by a reflight guarantee, the reimbursements for the reflight shall be the same as for a newly-scheduled launch.

§ 1214.812 Payload specialists.

(a) The use of customer-furnished payload specialists shall be subject to the approval of the NASA Administrator or the Administrator's designee.

(b) Customers with payloads whose Shuttle load factor is equal to or greater than 0.5 are entitled to request that a customer-selected payload specialist be flown with the customer's payload. Dedicated-flight customers are entitled to request the flight of two customer-selected payload specialists.

(c) NASA may approve the flight of a customer-selected payload specialist with payloads whose Shuttle load factor is less than 0.5 if, in NASA's judgment, there is sufficient scientific need to warrant such a flight.

(d) The standard Spacelab flight price is based on operation of the customer's payload by two NASA-furnished mission specialists. Accommodations for, and mission-independent training of, any payload specialists and backups required for the customer's mission shall be provided as optional services and shall be paid for by the customer. The price for this service shall be the same for both customer-furnished and NASA-furnished payload specialists.

§ 1214.813 Computation of sharing and pricing parameters.

(a) *General.* (1) Computational procedures as contained in the following subparagraphs of this paragraph of this section shall be applied as indicated. The procedure for computing Shuttle load factor, charge factor, and flight price for Spacelab payloads replaces the procedure contained in the Shuttle policy.

(2) Shuttle charge factors as derived herein apply to the standard mission destination of 160 nmi altitude, 28.5° inclination. Customers shall reimburse NASA an optional services fee for flights to nonstandard destinations.

(3) The customer's total Shuttle charge factor shall be the sum of the Shuttle charge factors for the customer's individual (dedicated, complete, or shared) elements, with the limitation that the customer's Shuttle charge factor shall not exceed 1.0.

(4) Customers contracting for pallet-only payloads are entitled to locate minimal controls as agreed to by NASA in a pressurized area to be designated by NASA. There is no additional charge for this service.

(5) NASA shall, at its discretion, adjust up or down the load factors and load fractions calculated according to the procedures defined in this section. Adjustments shall be made for special space or weight requirements which include, but are not limited to:

(i) Sight clearances, orientation, or placement limits.

(ii) Clearances for movable payloads.

(iii) Unusual access clearance requirements.

(iv) Clearances extending beyond the bounds of the normal element envelope.

(v) Extraordinary shapes.

The adjusted values shall be used as the basis for computing charge factors and prorating services.

(b) *Definitions used in computations*—(*1*) L_c = Chargeable payload length, m. The total length in the cargo bay occupied by the customer's experiment and the Spacelab element(s) used to carry it.

(2) W_c = The weight of the customer's payload and the customer's pro rata share of the weight of NASA mission-peculiar equipment carried to meet the customer's needs, kg.

(c) *Dedicated-Shuttle Spacelab flight (1-day mission).* The total reimbursement is as defined in § 1214.804(e)(3).

(d) *Dedicated-pallet flight (1-day mission).* (1) The Shuttle load factors and charge factors for dedicated-pallet flights are shown in Table 1. Subject to other STS Spacelab structural limits, customers are entitled to utilize the payload weight capability of the pallets as indicated in Table 1. Payload weights in excess of those shown are subject to NASA approval and may entail optional services charges.

TABLE 1—SHUTTLE LOAD FACTORS, CHARGE FACTORS, AND NOMINAL CAPACITIES FOR DEDICATED PALLETS

Number of pallets	Load factor		Charge factor		Nominal payload capacity kg	
	With igloo	FMDM configuration	With igloo	FMDM configuration	With igloo	FMDM configuration
1	0.228	0.189	0.305	0.252	2,325	2,950
2	0.392	NA	0.523	NA	4,470	NA
3-pallet train [1]	0.556	NA	0.742	NA	4,435	NA
2 + 1 configuration	0.594	NA	0.792	NA	7,750	NA

[1] Three pallets requiring the "1 + 1 + 1" configuration shall be flown on a dedicated flight basis [See § 1214.804(a)]

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(e) *Dedicated FMDM/MPESS flight (1-day mission)*—(*1*) *Shuttle charge factor.* The computed charge factor for dedicated FMDM/MPESS flights is defined as:

Shuttle Load Factor
0.75

(2) *Shuttle load factor.* (i) The Shuttle load factor is defined as the maximum of:

$$\frac{L_c}{18.29} \quad \text{or} \quad \frac{W_c + 767}{29{,}478}$$

(ii) The minimum value of L_c is based on the element length, plus clearances, and is 1.18 m.

(3) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(f)(3).

(f) *Complete pallets (7-day mission).* (1) The Shuttle load factor and charge factor for a complete pallet are 0.198 and 0.228, respectively, and its payload weight capability is 2,583 kg. Subject to other STS or Spacelab structural limits, customers are entitled to utilize this payload weight capability. Payload weight in excess of 2,583 kg is subject to NASA approval and may entail optional service charges.

(2) *Total reimbursement.* The customer's total reimbursement is as defined in § 1214.804(g)(3).

(g) *Shared elements (7-day mission)—(1) Spacelab load fractions and Shuttle load factors—(i) Pallet.* Spacelab load fraction is the greater of:

$$\frac{W_c}{2{,}583} \quad \text{or} \quad \frac{\text{Payload volume, m}^3}{15}$$

Shuttle load factor is the greatest of:

$$\frac{W_c}{13{,}045} \quad \text{or} \quad \frac{\text{Payload volume, m}^3}{76}$$

(ii) *Pressurized module.* Spacelab load fraction and Shuttle load factor are identical and are the greater of:

$$\frac{W_c}{4{,}319} \quad \text{or} \quad \frac{2 \times (\text{Experiment volume}) + \text{Storage volume, m}^3}{40}$$

(2) *Shuttle charge factors and element charge factors for pressurized modules.* Shuttle charge factors and element charge factors are identical and are defined as follows:

If the Spacelab load fraction (and Shuttle load factor) is—	The element charge factor and Shuttle charge factor shall be—
Less than 0.00435	.005
0.00435 to 0.87	Spacelab load fraction divided by 0.87
Greater than 0.87	1.0

(3) ***Element charge factors for shared pallets.***

If the Spacelab load fraction is—	The element charge factor shall be—
Less than 0.0189	0.0218
0.0189 to 0.87	Spacelab load fraction divided by 0.87
Greater than 0.87	1.0

(4) *Shuttle charge factors for shared pallets.*

If the Shuttle load factor is—	The Shuttle charge factor shall be—
Less than 0.00375	0.005
0.00375 to 0.75	Shuttle load factor divided by 0.75
Greater than 0.75	1.0

(5) *Total reimbursement.* (i) The customer's total reimbursement is as defined in § 1214.804(h)(3).

(ii) If a customer contracts for portions of more than one element, the charges for the use of the elements shall apply individually to each element used.

(6) Experiment volume in the pressurized module is defined to be the sum of the customer's payload volume in racks and in the center aisle.

(i) Rack volume is defined relative to basic Air Transportation Rack (ATR) configurations. The customer's rack volume shall be defined as the volume of one or more rectangular parallelepipeds (rectangular-sided box) which totally enclosed the customer's payload. Width dimensions shall be either 45.1 or 94.0 centimeters. Height dimensions shall be integral multiples of 4.45 centimeters. Depth dimensions shall be 61.2 or 40.2 centimeters.

(ii) Center aisle space volume is defined as the volume of a rectangular parallelepiped which totally encloses the customer's payload. No edge of the parallelepiped shall be less than 30 centimeters in length.

(7) Storage volume in the pressurized module is defined as the volume of one or more rectangular parallelepipeds enclosing the customer's stowed payload. No edge of the parallepiped(s) shall be less than 30 centimeters in length.

(8) Volume of the customer's pallet-mounted payload is defined as the volume of a rectangular parallelepiped enclosing the pallet payload and customer-dictated mounting hardware. No edge of the parallelepiped shall be less than 30 centimeters in length.

Subpart 1214.9—Use of Small Self-Contained Payloads

SOURCE: 45 FR 73023, Nov. 4, 1980, unless otherwise noted.

§ 1214.900 Scope.

This subpart sets forth the policy on Space Transportation System (STS) services which are provided by NASA to users of small self-contained payloads (SSCP's).

§ 1214.901 Relation to Subparts 1214.1 and 1214.2.

This subpart governs the provision of STS services for SSCP's and Subparts 1214.1 and 1214.2 are not applicable.

§ 1214.902 Definitions.

(a) U.S. Government users are defined as all agencies of the U.S. Government, including NASA.

(b) SSCP's are small (200 pounds or less and 5 cubic feet or less) scientific research and development payloads flown on a space-available basis in a NASA-supplied standard container under the provisions of this subpart. Such payloads may be composed of one or more experiments in the same container.

(c) Classes of SSCP's are defined as follows:

(1) Class I payloads are payloads flown for scientific educational purposes by a recognized educational institution or in support of a recognized broad-participation scientific educational process (e.g., science fairs). Users with Class I payloads are encouraged to publish results of their work in the open literature.

(2) Class II payloads are payloads that do not come under the Class I definition and are flown by users other than U.S. Government users. A multiclass payload containing a Class II experiment will be considered a Class II payload.

(3) Class III payloads are payloads flown by U.S. Government users that do not come under the Class I defini-

tion. A multiclass payload containing Class I and III experiments only will be considered a Class III payload.

(d) A small self-contained payload user is an individual or entity that has either signed a launch services agreement with NASA or is eligible to enter into negotiations to do so on the basis of payment (by the user or others) of earnest money to NASA (or, in the case of a U.S. Government user, has submitted a letter of intent). If more than one individual or entity enters into a joint venture or other arrangement to fly their experiments in one NASA container, one individual or entity shall be designated by them as their agent. This agent shall be the sole "user" for that payload, with full authority to represent every individual or entity which has an interest in that container.

(e) Standard services provided to all SSCP users are listed in § 1214.911.

(f) Optional services are additional services provided to individual users at the request of the user and at the discretion of NASA.

(g) Dual payloads are two SSCP's belonging to the same user for which the user has specified, in the launch services agreements, a requirement that they be flown on the same flight. Each of the payloads shall be completely autonomous and no interconnection of dual payloads shall be permitted.

(h) Undue administrative delay on the part of NASA is defined as a delay caused by NASA's failure to perform its administrative functions in the contracting process in a reasonable time, as determined by NASA. Delays caused by the parties' inability to agree to contract terms and conditions are specifically excluded from this definition.

§ 1214.903 Conditions of use.

(a) Users' payloads must be flown in a NASA-supplied standard container.

(b) SSCP's shall be used only to conduct experiments of a scientific research and development nature.

(c) All users shall be required to furnish NASA with sufficient information to ensure Shuttle safety. NASA shall reserve the right to inspect and/or test any and all materials, components, and elements of the payload at any time.

(d) All users shall be required to furnish NASA with sufficient information to verify peaceful purposes and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

(e) NASA shall reserve the right to reject any payload which, in the opinion of the NASA Administrator, would be contrary to the spirit of this program or NASA's mission.

(f) To assure humane treatment, all experiments using live animals must have the approval of the Life Sciences Division, Office of Space Science, NASA Headquarters.

§ 1214.904 Reimbursement policy.

(a) *Earnest money.* (1) Earnest money shall be paid to NASA by users (except U.S. Government users) with Class I or Class II payloads prior to launch services contract negotiations. The earnest money, which will be $500 per payload, shall be applied to the user's price or retained by NASA.

(2) U.S. Government users shall submit a letter of intent, signed by an authorized party, to initiate the process of contracting for an SSCP flight.

(b) *Reimbursement by non-NASA users.* (1) All users shall be charged on a fixed-price basis.

(2) The price shall remain fixed for all payloads covered by launch services agreements signed through the third full fiscal year of STS operations. During this period, the price for standard services shall be as designated below.

Maximum Payload for Standard Services

Weight, pounds	Volume, cubic feet	Price
200	5.0	$10,000
100	2.5	5,000
60	2.5	3,000

(3) Subsequent to the first three full fiscal years, NASA may annually adjust the prices for the flight of SSCP's. Such adjustments shall not affect launch services agreements already in force.

(4) NASA shall be reimbursed an amount which is the sum of the price for standard services and the price for optional services.

(5) A separate launch services agreement shall be signed for each payload. At the time a launch services agreement is signed, the user shall reimburse NASA 10% of the price for standard services. This reimbursement shall be in addition to any earnest money already paid.

(6) The user shall reimburse NASA an additional 40% of the price for standard services at the later of:

(i) The time of signing of the launch services agreement, or

(ii) Eighteen months before the earliest acceptable launch date for the payload.

(7) The balance of the reimbursement for standard services, less earnest money payments, shall be made on the date designated for delivery of the payload to the launch site.

(8) Payment for any optional services shall be due on receipt of NASA's billing and shall be made prior to NASA's provision of the service.

(c) *Postponement.* (1) A postponement by the user shall be defined to occur if the user:

(i) With no undue administrative delay on the part of NASA, fails to execute the addendum to the launch services agreement described in § 1214.905(d) either at the time of signing of the launch services agreement or by 18 months before the earliest acceptable launch date, whichever is later; or

(ii) Refuses to accept a tentative flight assignment which, in NASA's judgment, meets the user's stated needs; or

(iii) Fails to deliver the payload to the launch site by the designated time; or

(iv) Declines or is unable to fly the payload on a given flight after having accepted a tentative flight assignment; or

(v) Requests a delay in the earliest acceptable launch date for payload. (Only changes to later dates shall be permitted.)

(2) *Postponement fees for non-NASA users.* (i) Users who postpone the flight of a payload shall reimburse NASA a postponement fee which is the sum of the estimated cost of optional services to be repeated and a fee for standard services.

(ii) A user may postpone the flight of a payload once without incurring a fee for standard services.

(iii) If the second and subsequent SSCP user-initiated postponements occur before the date designated for payload delivery to the launch site, the fee for standard services shall be 5% of the price for standard services. If the second and subsequent user-initiated postponements occur on or after the date designated for payload delivery to the launch site, the fee for standard services shall be 20% of the price for standard services.

(iv) Postponement fees shall be payable on receipt of NASA's billing.

(3) *Rescheduling after a postponement by the user.* Rescheduling of a payload after a user postponement shall be accomplished by establishing a new earliest acceptable launch date. A rescheduled payload shall retain its original position in the flight assignment queue awaiting tentative flight assignment.

(4) A user may not postpone after the container is installed in the Shuttle.

(d) *Cancellation fees for non-NASA users.* (1) Users who cancel the flight of a payload shall reimburse NASA a cancellation fee which is the sum of the estimated cost of optional services performed by NASA prior to the notification of cancellation, including any cancellation costs, and a fee for standard services. In addition, NASA shall retain the earnest money paid for the payload.

(i) If a user cancels after signing a launch services agreement but before the date designated for payload delivery to the launch site, the fee for standard services shall be 10% of the user's standard services price.

(ii) If a user cancels on or after the date designated for payload delivery to the launch site, the fee for standard services shall be 50% of the user's standard services price.

(2) A user may not cancel after the container is installed in the Shuttle.

(3) If flight of a payload which has been previously postponed is can-

celled, the cancellation fee shall be the larger of the cancellation fee which would have been applicable at the time of any prior postponement or the cancellation fee calculated at the time of cancellation.

(4) Cancellation fees shall be payable on receipt of NASA's billing.

§ 1214.905 Flight scheduling.

(a) NASA receipt of the user's earnest money or letter of intent for one or more payloads shall be the basis for defining the payload(s) position in a temporary queue designated as the earnest money queue.

(b) Signing of a launch services agreement shall enter the payload covered by the agreement into a flight assignment queue. The payload's position in this queue is determined as follows:

(1) If a launch services agreement is signed within 18 months after NASA receipt of earnest money or letter of intent, the payload shall remain ahead of all payloads that entered the earnest money queue later than it did.

(2) If the launch services agreement is not signed within 18 months after NASA receipt of earnest money or letter of intent, the earnest money date shall be redefined to be 18 months before the date of the launch services agreement signing.

(3) If the user changes a payload's user class designation after signing a launch services agreement, the earnest money payment date shall be redefined to be the date of the user class change.

(4) The 18-month periods defined in §§ 1214.905(b)(1) and 1214.905(b)(2), shall be extended to the extent that the user's failure to sign the launch services agreement is a result of undue administrative delay on the part of NASA.

(c) At the time of signing, the launch services agreement shall designate:

(1) The user class of the payload.

(2) The general nature of the payload.

(3) The size and weight of the payload.

(4) The price for standard services to be provided.

(5) The earliest acceptable launch date as selected unilaterally by the user.

(d) Not less than 18 months before the user's earliest acceptable launch date or at the signing of the launch services agreement, whichever is later, an addendum to the launch services agreement shall be signed by NASA and the user. The addendum shall designate:

(1) Any apportionment or assignment of the payload.

(2) A description of the payload.

(3) Any restrictions on the type of Shuttle flight appropriate for flying the payload, including any firm requirement to fly on a single flight as a dual payload with one other of the user's payloads.

(4) The optional services to be provided by NASA and the price of those services.

(5) The means of compliance with the provisions of § 1214.908 regarding significant impact on public health, safety or welfare.

(e) If, after attempting to negotiate with the user, it is NASA's opinion that the parties will be unable to agree on the terms of the addendum, NASA may terminate further negotiations. This event will be considered a cancellation by the user and the provisions of § 1214.904(d) shall apply.

(f) NASA shall not be obligated to perform any standard or optional services, including flight scheduling, prior to the signing of the addendum to the launch services agreement.

(g) Approximately 1 year before a planned Shuttle launch, NASA shall estimate the number of spaces available for SSCP's, make tentative flight assignments, and establish dates for payload delivery to the launch site.

(h) Payload tentative flight assignment shall be made on a rotation basis by user class. The continuing rotation sequence by class shall be II, I, II, III. If no payloads of a given class are available at the time of tentative flight assignment, a payload of the next class in the rotation shall be assigned to the available space.

(i) When making tentative flight assignments, NASA shall consider only those payloads whose earliest acceptable launch dates are on or before the

Shuttle "firm launch data" as defined in § 1214.102(c)(2). (Shuttle flights normally occur on the "firm launch date" or within 60 days thereafter.)

(j) Users' payloads shall be assigned on the basis of their positions in the flight assignment queue within each class with the following exceptions:

(1) If the available flight does not meet the user's requirements defined pursuant to § 1214.905(d)(3), the payload shall not be assigned to the flight but shall retain its position in the flight assignment queue until a sutiable flight becomes available.

(2) A single user may receive tentative flight assignments for no more than two payloads in the same class out of any group of 20 payloads assigned (all classes combined) if there are other payloads available for assignment. However, all the provisions of this subpart shall apply individually to each payload.

(3) Dual payloads shall become eligible for tentative flight asssignment when the latter of the two payloads becomes eligible for tentative flight assignment in the class rotation sequence. If only one space is available on the flight under consideration, a payload of the next available class in the rotation sequence shall be assigned and the dual payloads shall both be assigned to the next compatible flight, provided that the requirements of §§ 1214.905(j)(2) and 1214.905(m) are maintained.

(k) Once an SSCP has been given a tentative flight assignment, it shall not be bumped from a flight as a result of another SSCP user's subsequent signing of a launch services agreement or another SSCP user's postponement.

(l) An SSCP tentatively assigned to a flight may be bumped by NASA as a result of other Shuttle operational considerations. Should this be necessary, bumping shall be done on a last-on, first-bumped basis. If either of a pair of duel payloads is bumped, the remaining payload of the pair shall also be bumped.

(m) Payloads being reflown pursuant to § 1214.907 and payloads bumped by NASA after tentative flight assignment shall have flight assignment priority, in that order, on subsequent flights over all other SSCP's including those already assigned to other flights.

(n) The date for payload delivery to the launch site shall normally be 2 months before the Shuttle "firm launch date." However, NASA may designate a later date.

(o) Users shall not use third-party or joint venture arrangements to attempt to circumvent the intent of this paragraph.

§ 1214.906 Transfer of ownership, apportionment and assignment of services.

(a) Prior to the signing of a launch services agreement, users shall be permitted to transfer, to a third party, ownership of the eligibility to enter into negotiations with NASA for the flight of a small self-contained payload, subject to NASA approval of the transfer.

(b) Transfer of ownership shall not result in a change in position in the earnest money queue.

(c) Subject to NASA approval, SSCP users shall be permitted to apportion and assign services to others.

(d) U.S. Government users shall not transfer to others the eligibility to negotiate a launch services agreement.

(e) NASA shall negotiate with only one responsible person or entity for the use of each NASA container. At the time the launch services agreement is negotiated, the user shall identify a single payload manager for the entire payload to be flown in the container. At the time the addendum to the launch services agreement is signed, the user shall identify any apportionment or assignment of services. After the addendum to the launch services agreement is executed, no additional apportionment, assignment, or transfer of ownership shall be permitted without the written approval of NASA.

§ 1214.907 Reflight guarantee.

NASA guarantees a reflight of the user's payload at no additional charge for SSCP standard services if, through no fault of the user, the mission orbit is not attained and if the payload returns safely to Earth or a second essentially identical payload is provided by the user. Users entitled to a reflight shall be entitled, at no additional charge, to any planned but unused and undamaged optional SSCP services from the flight for which the reflight is provided.

§ 1214.908 Patent and data rights.

NASA will not acquire rights to inventions, patents, or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety, or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

§ 1214.909 Damage to payloads.

The user's price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government, its contractors, or other STS users. The U.S. Government, therefore, shall assume no risk for damage or loss to the user's payload. The user shall assume that risk or obtain insurance protection against that risk.

§ 1214.910 Special provisions for users who made earnest money deposits or submitted letters of intent prior to publication of this subpart.

(a) Within 30 days after final publication NASA shall supply a copy of this subpart to all users who have made earnest money deposits or submitted letters of intent.

(b) Users may request in writing a refund of their earnest money provided the request is received by NASA within 90 days after final publication of this subpart. There shall be no subsequent refund of earnest money.

(c) Payloads covered by a launch services agreement signed within 18 months after final publication of this subpart shall retain the appropriate queue position established by payment of earnest money or submission of letter of intent.

(d) Payloads not covered by a launch services agreement signed within 18 months after final publication of this subpart shall be governed by the provisions of § 1214.905(b)(2).

§ 1214.911 Small self-contained payload standard services.

The following are standard services provided for small self-contained payloads:

(a) Flight in a NASA flight-qualified standard container.

(b) Use of a NASA shipping container.

(c) One "on" and one "off" signal provided on each of three NASA-provided inputs to the container.

(d) Choice of one standard NASA container atmosphere (vacuum, breathing air, inert gas, inert gas vented in space).

(e) Limited consultation on space systems provided by NASA at designated NASA centers.

(f) NASA payload safety reviews at a designated NASA center. (Safety shall not be compromised. Unusually complex safety reviews or testing/analysis require additional funding.)

(g) Pre-integration storage of the payload at KSC.

(h) Limited access to the payload prior to integration.

(i) Installation of the payload in the container and removal of the payload from the container after flight.

(j) Installation of the container in the Shuttle and removal of the container from the Shuttle after flight.

(k) KSC launch.

(l) On-orbit payload operational time consistent with the primary STS mission.

(m) Brief postflight documentation of the STS mission profile and payload operational times.

(n) Return of payload to the user at the launch site.

§ 1214.912 Small self-contained payload optional services.

(a) The following optional services, under development at the time of publication of this rule, shall be made available using NASA-supplied hardware:

(1) Openable lid.

(2) Optical window in the lid.

(b) NASA shall develop and publish technical and price estimating information relative to the use of the above services.

(c) NASA may, at its discretion, provide other optional services to users. The price for such services shall be negotiated.

Subpart 1214.10—Procurement of Spinning Solid Upper Stages

SOURCE: 45 FR 48880, July 22, 1980, unless otherwise noted.

§ 1214.1000 Scope.

This Subpart 1214.10 sets forth the NASA policy on procurement of Spinning Solid Upper Stages (SSUS). It does not cover Shuttle launch services defined in Subpart 1214.1 and Subpart 1214.2.

§ 1214.1001 Definitions.

(a) *SSUS.* A generic acronym for a Spinning Solid Upper Stage developed commercially under NASA-SSUS supplier agreements to be used as a perigee stage for certain Shuttle payloads. This generic difinition encompasses upper stages for Delta-class (SSUS-D) and Atlas-Centaur-class (SSUS-A) payloads.

(b) *SSUS supplier.* A commercial organization providing SSUS hardware and related services.

(c) *NASA-SSUS supplier agreement.* An agreement between NASA and a SSUS supplier delineating technical and operational requirements and financial conditions regarding the commercial development and supplying of SSUS and related services to a user.

(d) *SSUS launch site services.* Those launch site services provided by NASA to the SSUS supplier for the SSUS suppliers use in preparing a SSUS as a part of a Shuttle Payload for a user.

§ 1214.1002 Procurement policy.

(a) NASA has entered into agreement(s) with commercial source(s) for the commercial development and supply of Spinning Solid Upper Stages (SSUS) for both Delta-class and Atlas-Centaur-class payloads. SSUS services, therefore, are available to the STS user community at large and their availability is not contingent upon, nor does it require, a NASA involvement for their procurement. Accordingly, NASA's general policy is not to act as a procuring agent for the user community, but to encourage the user community to procure required SSUS and related services from the commercial source(s).

(b) Normally, users requiring a SSUS shall procure the SSUS hardware and related services from a SSUS supplier. However, in the case of SSUS-A, the user should contact NASA for the purpose of determining whether there are SSUS-A vehicles presently under contract which could be made available for the user's intended purpose. If so, the SSUS-A would be procured directly from NASA.

(c) Within its discretion and capability, NASA will undertake SSUS procurement in circumstances where:

(1) NASA is acting upon the request of a U.S. Government user under the terms of an interagency agreement in behalf of the Federal Government, or

(2) A non-U.S. Government user does not have and cannot reasonably obtain the expertise needed to manage a SSUS procurement and requests NASA to perform this function as a procurement agent for the user, or

(3) A non-U.S. Government user does have or can reasonably obtain the expertise needed to manage a SSUS procurement but still explicitly requests and NASA agrees to perform this function as a procurement agent for the user.

(d) Users utilizing NASA as their procurement agent for SSUS procurement shall contract directly with NASA for such procurement services.

(e) All users shall enter into a Launch Service Agreement with NASA for SSUS launch site services.

(f) The United States shall not be liable for costs or damages directly or indirectly arising from a delayed mission, or an unsuccessful performance of the SSUS.

§ 1214.1003 Reimbursement procedure.

(a) Within the guidelines of the NASA-SSUS supplier agreements, a user procuring a SSUS from a SSUS supplier shall:

(1) Reimburse the SSUS supplier for the SSUS and related services.

(2) Reimburse NASA for all SSUS launch site services provided to the SSUS supplier.

(b) A user who has entered into a Launch Services Agreement with NASA which calls for NASA to act as a procurement agent for SSUS and related services shall reimburse NASA an amount which is the sum of:

(1) The contract price of the SSUS and related services.

(2) A fee for NASA activities associated with a SSUS procurement.

(3) The price for all NASA-provided SSUS launch site services.

(c) In addition to paragraphs (a) and (b) of this section, SSUS users will reimburse NASA a share of the costs incurred by NASA for monitoring the commercial SSUS development and a share of the costs of NASA's investment in SSUS capabilities.

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

SOURCE: 50 FR 13187, Apr. 3, 1985, unless otherwise noted.

§ 1214.1100 Scope.

It is NASA policy to maintain an integrated Astronaut Corps. This Subpart 1214.11 sets forth NASA procedures and assigns responsibilities for recruitment and selection of astronaut candidates. It applies to all pilot and mission specialist astronaut candidate selection activities conducted by the National Aeronautics and Space Administration.

§ 1214.1101 Announcement.

(a) Astronaut candidate opportunities will be announced by the Johnson Space Center (JSC) on a nationwide basis and open to the general public on a continuing basis, and republicized annually, unless specifically cancelled by NASA.

(b) Civilian applicants may apply at any time.

(c) JSC is responsible for implementing and refining the astronaut candidate application process to minimize the effort required to file and/or update applications.

(d) Military personnel on active duty must apply through and be nominated by the military service with which they are affiliated. Military nominees will not be part of the continuing pool of applicants. The Military services will normally convene their internal selection board annually during the latter part of the year and provide nominees to NASA early the following year. The military nominees will be evaluated by NASA and the military services will be notified promptly of those nominees who are finalists.

(e) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

§ 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed by the JSC Personnel Office to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified in writing and will not be eligible for further consideration. Those meeting the basic qualification requirements will have their applications retained for review by designated rating panels.

(b) The JSC Director, or designee, will appoint discipline experts who will review and rate qualified applicants into one of three levels: Qualified, Well Qualified, or Highly Qualified.

(c) Efforts will be made to assure that minorities and females are included among these discipline experts.

(d) The criteria for each level will be developed by JSC and will serve as the basis for the ratings. The evaluation will be based on the extent to which the individual's academic achievements, experience, and special qualifications relate to the astronaut candidate position. Reference information on those rated "Highly Qualified" will be obtained. The JSC Personnel Officer will monitor this process to assure adherence to applicable rules and regulations.

(e) Medical documentation on the Highly Qualified will be evaluated by the JSC medical staff and an initial medical determination made. Applicants may be contacted for further information if necessary. Only medically qualified applicants will be referred for final evaluation and possible interview and selection. Those who are not medically qualified will be so informed and will not be eligible for further consideration.

§ 1214.1103 Requesting candidates.

(a) The JSC Director, or designee, is responsible for identifying the need for additional astronaut candidates and for obtaining necessary approval to make selections.

(b) Once such approval has been obtained, the JSC Director will request the list of Highly Qualified applicants from the JSC Personnel Officer.

(c) The date of this request will determine the cutoff date for acceptance of applications for that selection. Applications received after the date of the request will be maintained and processed for the next selection.

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) The JSC Director, will appoint a selection board consisting of discipline experts and such other persons as appropriate to further evaluate and rank those Highly Qualified applicants certified to the JSC Director by the JSC Personnel Officer.

(b) Efforts will be made to assure that minorities and females are included on this board.

(c) Those Highly Qualified applicants who are determined to be the "best qualified" will be invited to the Johnson Space Center for an interview, orientation, and detailed medical evaluation.

(d) Background investigations will be initiated on those applicants rated best qualified.

§ 1214.1105 Final ranking.

Final rankings will be based on a combination of the selection board's initial evaluations and the results of the interview process. Veteran's preference will be included in this final ranking in accordance with applicable regulations.

§ 1214.1106 Selection of astronaut candidates.

The selection board will recommend to the JSC Director its selection of candidates from among those finalists who are medically qualified. The number and names of candidates selected to be added to the corps will be approved, as required, by JSC/NASA management and the Associate Administrator for Space Flight, prior to notifying the individuals or the public.

§ 1214.1107 Notification.

Selectees and appropriate military services will be notified and the public informed. All unsuccessful qualified applicants will be notified of nonselection and given the opportunity to update their applications and indicate their desire to receive consideration for future selections.

Subpart 1214.15—Duty-Free Entry of Space Articles

AUTHORITY: Secs. 116 and 156 of Pub. L. 97-446, 96 Stat. 2335-2336 and 2345-2346 (19 U.S.C. 1202 note).

SOURCE: 49 FR 8427, Mar. 7, 1984, unless otherwise noted.

§ 1214.1500 Scope.

This subpart sets forth NASA's policy and procedures with respect to authorizing the duty-free entry of articles imported into the United States by any person or entity which are to be launched into space by NASA, including spare parts or necessary and uniquely associated support equipment in connection with a launch into space. It also deals with the duty-free entry of articles returned from space by NASA.

§ 1214.1501 Applicability.

This subpart applies to qualifying articles entered or withdrawn from warehouse for consumption in the customs territory of the United States between January 27, 1983, and December 31, 1994, and to articles returned from space by NASA.

§ 1214.1502 Background.

In order to encourage and facilitate the use of NASA's launch services for the exploration and use of space, section 116 of Pub. L. 97-446 provides for the duty-free entry into the United States of certain articles that meet the following two conditions: First, the articles must be imported for NASA for its space related activities or the articles must be imported by another person or entity for the purpose of meeting its obligations under a launch services agreement with NASA. Second, NASA must certify to the Commissioner of Customs that the articles to be entered duty-free are to be imported to be launched into space or are spare parts or necessary and uniquely associated support equipment for use in connection with a launch into space. This exemption from duty is provided for in item 837.00, Tariff Schedules of the U.S. (19 U.S.C. 1202 note). Section 116 of Pub. L. 97-446 also provides for the duty-free entry into the United States of articles returned from space by NASA.

§ 1214.1503 Authority to certify.

(a) The following NASA officials and their deputies are authorized, under the conditions described herein, to make the certification to the Commissioner of Customs required for the duty-free entry of space articles pursuant to item 837.00, Tariff Schedules of the U.S. (19 U.S.C. 1202, note). No further redelegation is authorized.

(1) The NASA Assistant Administrator for Procurement is authorized to issue the certification for articles imported into the United States which are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government pursuant to the terms of the contract or subcontract. Requests for certification should be sent to: H/Assistant Administrator for Procurement, Attn: HP/Director, Procurement Policy Division, National Aeronautics and Space Administration, Washington, DC 20546.

(2) The NASA Associate Administrator for External Relations is authorized to issue the certification for articles imported into the United States pursuant to international cooperative agreements. Requests for certification should be sent to: L/Associate Administrator for External Relations, Attn: LI/Director, International Affairs Division, National Aeronautics and Space Administration, Washington, DC 20546.

(3) The NASA Associate Administrator for Space Flight is authorized to issue the certification for articles imported into the United States by persons or entities or under agreements other than those identified in paragraphs (a) (1) and (2) of this section. Requests for certification should be sent to: M/Associate Administrator for Space Flight, Attn: MC/Director, Customer Services Division, National Aeronautics and Space Administration, Washington, DC 20546.

(b) Each request for certification shall be reviewed by the Office of the NASA Comptroller and the Office of General Counsel and their concurrence obtained by the certifying official.

(c) To the extent an authorized NASA official approves a request for certification, that official shall sign a certificate in the following form:

Articles for the National Aeronautics and Space Administration, Item 837.00, TSUS

I certify that the articles identified in ——— attached, are articles to be imported to be launched into space, spare parts, or necessary and uniquely associated support equipment for use in connection with a launch into space in accordance with item 837.00, Tariff Schedules of the United States.

Name ———————————————
Date ———————————————

(d) A blanket certificate for one or more launches for a launch customer is authorized but shall require written verification by a NASA official designated by a Director of a receiving NASA Installation that the articles imported meet the conditions of the certificate. The blanket certificate shall be in the following form but may be reasonably revised to accord with the circumstances.

Articles for the National Aeronautics and Space Administration, Item 837.00, TSUS

I certify that the articles for the launch of ——— payload(s) pursuant to the NASA Launch and Associated Services Agreement

No ——, dated —— with —— are articles to be launched into space, spare parts, or necessary and uniquely associated support equipment for use in connection with a launch into space, in accordance with item 837.00, Tariff Schedules of the United States. The necessary and uniquely associated support equipment is identified in —— attached.

Before this certificate is used to obtain the duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation who is designated by the Installation Director shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certificate. This verification and this certificate shall be presented to the U.S. Customs Service at the time entry for the particular articles is sought.

Name ————————————

Date ————————————

With respect to articles represented to be necessary and uniquely associated support equipment, the NASA official issuing the blanket certificate shall review these articles and approve their eligibility for duty-free entry. A description of these articles should be referred to in the blanket certificate and should be attached to it.

§ 1214.1504 Procedures.

(a) Request for certification shall be forwarded to the appropriate NASA official who has authority to certify as provided for in § 1214.1503.

(b) Each request for certification shall be accompanied by:

(1) A proposed certificate as provided for in § 1214.1503;

(2) The information and documentation required by 19 CFR 10.102(a);

(3) A statement with respect to each article, or each class of articles if all items in the class are substantially identical whether (i) the article is to be launched into space by NASA (identify the launch agreement, launch vehicle and launch date(s)); or (ii) it is a spare part to an article to be launched into space; or (iii) it is necessary or uniquely associated support equipment for use in connection with a launch into space.

(4) If the article is represented to be necessary and uniquely associated support equipment for use in connection with a launch into space, with respect to each such article or each such class of articles to be imported, explain why it is necessary and unique; and if the article may be used in connection with an activity other than a launch into space, whether or not it is intended to be so used. If it may be used in such other activity, NASA shall require, of non-U.S. Government agencies, as a condition to obtaining duty-free entry under this subpart, the customer to agree in the relevant NASA launch agreement not to use or in any manner dispose of those articles in the United States other than in connection with a launch into space; and

(5) The anticipated date of entry and port of entry for each article. If the article is to be transported in bond from the port of arrival to another port of entry in the United States, identify both ports.

(c) The signed certificate and its attachment will be forwarded to the NASA installation responsible for the duty-free entry of the materials. The procedures specified in 19 CFR 10.102 will be followed by the NASA installation in obtaining duty-free entry at the Customs port of entry. The NASA installation should ensure that, at the time the articles are to be released after Customs entry, the custody of the imported articles is transferred directly from the carrier or from the U.S. Customs Service to the NASA launch service customer or its agent.

(d) If articles procured under contract by NASA are imported prior to compliance with these procedures and it is essential that the articles be released from Customs custody prior to such compliance, the procedures outlined in 19 CFR 10.101 may be followed by cognizant NASA officials to secure the release of the articles from Customs custody. To the extent applicable, the procedures in § 1214.1504 shall be followed when time permits to obtain duty-free entry for the articles released from Customs custody.

§ 1214.1505 Necessary and uniquely associated support equipment.

The NASA certifying officer should take into account the following criteria in determining whether an article is necessary and uniquely associated support equipment in connection with a launch into space. Applicability of one or more of the following non-exclusive criteria lends support to the conclusion that the article is necessary and uniquely associated support equipment.

(a) The article has been designed and manufactured solely to support the launch of a payload or launch vehicle.

(b) A standard article has been modified in a substantial and extraordinary way considering its physical or functional characteristics solely to support launch of a payload or launch vehicle.

(c) The article's potential use is limited to support the launch of a payload or launch vehicle.

(d) The article is available only from a source outside of the Unites States.

(e) The article is a component of a system purchased outside of the United States.

(f) The article is to be exported from the United States upon completion of its use as support equipment.

§ 1214.1506 Articles returned from space.

Pursuant to section 116 of Pub. L. 97-446, the return of articles from space by NASA shall not be considered an importation, and an entry of such materials through the U.S. Customs Service shall not be required. This provision is applicable to articles returned by NASA from space whether or not the articles were launched into space onboard a NASA launch vehicle.

Subpart 1214.16—Nonscientific Payloads

AUTHORITY: 42 U.S.C. 2473.

SOURCE: 49 FR 34446, Aug. 31, 1984, unless otherwise noted.

§ 1214.1600 Scope.

This subpart establishes NASA policy regarding the accommodation of nonscientific payloads aboard the STS.

§ 1214.1601 Applicability.

This subpart applies to NASA Headquarters and field installations.

§ 1214.1602 Relation to Subparts 1214.1, 1214.2, and 1214.8.

Except as specifically noted, the provisions of the Space Shuttle and Spacelab policies also apply to nonscientific payloads. In event of any inconsistencies in the policies, the reimbursement policy established by this subpart will govern with respect to nonscientific payloads.

§ 1214.1603 Definitions.

(a) *Nonscientific payloads.* All cargoes that do not meet the definitions of national defense payloads; communications, weather, or other high technology satellites; materials sciences/processing payloads; scientific experiments; engineering test articles; or other similarly technical cargoes routinely considered for flight as conventional or self-contained payloads.

(b) *Total operations costs.* All direct and indirect costs. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead and contract administration.

(c) *Committee.* The Nonscientific Payload Evaluation Committee, established in NASA Headquarters for the purpose of reviewing technically feasible requests to fly nonscientific payloads. The Committee consists of the following NASA Headquarters officers or their designees: Chief Engineer (Code D), Associate Administrator for Policy (Code F), General Counsel (Code G), Associate Administrator for External Relations (Code L), as Chairperson, Associate Administrator for Space Flight (Code M), Associate Administrator for Space Science and Applications (Code E), Chief Scientist (Code P), and Associate Administrator for Aeronautics and Space Technology (Code R). The Committee will meet within 30 days of the effective date of this subpart and not less than once every 90 days thereafter. The Committee will develop procedures to carry out this policy.

(d) *Technically feasible for flight.* All physical aspects and operational characteristics of a payload which make it suitable for flight aboard the STS. Evaluation of the proposed payload for acceptance includes, but is not limited to, compatability with STS operating systems and other payloads, compliance with national and international radio spectrum regulations, safety considerations of the vehicles and crew, risk to other payloads, and ability of the STS to meet all customers' operational requirements.

§ 1214.1604 Policy.

(a) Nonscientific payloads are eligible for flight aboard the STS. Although the Space Shuttle and Spacelab were developed for the purpose of accommodating technical cargoes of the type described in § 1214.1603(a), nonscientific payloads may be flown on a space available basis.

(b) Normally no more than 10 percent of STS flight capability, as defined in Subparts 1214.1, 1214.2, and 1214.8, will be employed for nonscientific payloads.

(c) Nonscientific payloads must be approved by the Associate Deputy Administrator for flight prior to manifesting.

(d) Nonscientific payloads may be remanifested to accommodate technical cargoes.

(e) Reimbursement for standard services provided to nonscientific payloads normally will be based on total operations cost recovery.

(f) Information concerning the details which must be included in a nonscientific payload request, and current prices and fees may be obtained from Customer Services Division (Code MC), Office of Space Flight, NASA Headquarters, Washington, DC 20546.

(g) Exceptions to this policy may be granted at the discretion of the Associate Deputy Administrator.

§ 1214.1605 Approval of nonscientific payloads.

(a) All requests to fly nonscientific payloads aboard the STS will be addressed to the Director, Customer Services Division, who will screen the requests and forward those found technically feasible for flight to the Nonscientific Payload Evaluation Committee.

(b) The Committee will evaluate each request considering such matters as:

(1) The sponsor and nature of the proposed payload;

(2) The plan for developing the payload;

(3) Endorsement or opposition by a recognized professional, business, or charitable organization;

(4) The purpose to which the payload may be put when returned to Earth;

(5) Compliance with national and international radio regulations for payloads intentionally transmitting electromagnetic energy; and

(6) Other considerations which are appropriate to specific requests.

(c) Committee findings will be documented and forwarded directly to the Associate Deputy Administrator. Approval of nonscientific payloads for flights aboard the STS is reserved to the Associate Deputy Administrator.

(d) Rejected requests will be returned to their sponsors with explanations for their rejection.

§ 1214.1606 Preconditions for acceptance.

(a) Sponsors must accept responsibility for all expenses associated with or arising from their respective nonscientific payloads.

(b) Nonscientific payloads must be technically feasible for flight as determined by the Director, Customer Services Division, Office of Space Flight.

(c) NASA reserves the right to obtain evaluations of nonscientific payload requests from any individuals or organizations of its own choosing.

(d) Nonscientific payload sponsors must be willing to appear before the Nonscientific Payload Evaluation Committee to explain their requests.

(e) No payload will be accepted for flight which is inconsistent with NASA's mission or otherwise not in the national interest.

(f) No human or animal life will be permitted in a nonscientific payload.

(g) Nonscientific payloads will not be permitted to operate as free flyers.

(h) Nonscientific payload sponsors must enter into a standard NASA launch services agreement.

(i) All nonscientific payloads will be returned to Earth aboard the same STS flights that carry them into orbit.

(j) Acceptance for flight does not consitute NASA endorsement or certification (other than for Space Shuttle flight) of a nonscientific payload.

(k) NASA specifically reserves the right to reject nonscientific payloads proposed—or which appear to be proposed—solely or primarily for the purposes of advertising, publicity, endorsements, or other means of promotion.

(l) Each request to fly a nonscientific payload must be accompanied by a nonrefundable processing fee.

Subpart 1214.17—Space Flight Participants

AUTHORITY: 42 U.S.C. 2473 and the National Aeronautics and Space Act of 1958, as amended.

SOURCE: 49 FR 17737, Apr. 25, 1984, unless otherwise noted.

§ 1214.1700 Scope.

This subpart establishes NASA policy and selection procedures for accommodation of space flight participants aboard flights of the STS.

§ 1214.1701 Applicability.

This subpart applies to NASA Headquarters and field installations.

§ 1214.1702 Relation to other Part 1214 material.

Except as specifically noted, all regulatory provisions of Space Shuttle policies also apply to space flight participants. In the event of any inconsistencies in the policies, the regulatory policies established for crew members will govern with respect to space flight participants.

§ 1214.1703 Definitions.

(a) *Space flight participants.* All persons whose presence aboard an STS flight is authorized in accordance with this regulations.

(b) *Committee.* The Space Flight Participant Evaluation Committee, established in NASA Headquarters for the purpose of directing and administering the program for space flight of private citizens. The Committee consists of the following NASA Headquarters officials: Associate Deputy Administrator (Chair), General Counsel, Associate Administrator for External Relations, Associate Administrator for Management, Associate Administrator for Space Flight, Chief Scientist, and Assistant Administrator for Equal Opportunity Programs.

§ 1214.1704 Policy.

(a) NASA policy is to provide opportunity for participation of private citizens in space flight to the extent possible, provided that doing so fulfills purposes defined in the National Aeronautics and Space Act, as amended, and poses no threat to the safety or success of other mission objectives. Persons selected for flight for these purposes are designated as space flight participants.

(b) To be considered for selection as space flight participants, applicants must:

(1) Be free of medical conditions which would either impair the applicant's ability to participate in, or be aggravated by, space flight, as determined by NASA physicians.

(2) Be willing to undergo appropriate background investigation.

(3) Be willing to undergo necessary training.

(4) Meet additional requirements that may be stated in Announcements of Opportunity (AO) soliciting applications for particular spaceflights.

(c) Persons accepted as space flight participant candidates will enter into an agreement with NASA for the period of training, flight, debriefing, and post-flight activities. The agreements will cover such pertinent matters as, but not limited to, responsibilities and authorities of the respective parties, compensation where appropriate, insurance, and liability.

(d) Selection of space flight participants will be based on their comparative abilities to fulfill the objectives and purposes stated in AO's covering one or more STS missions in which their participation is desired. A NASA-designated outside review panel will evaluate the qualifications of applicants to select those who most appropriately meet those purposes of participant flight associated with the particular AO. NASA will retain the authority to make final selection of space flight participants for flight training and eventual flight from among those applicants rated most highly in the review process. NASA will encourage the participation of a wide and diverse array of participants, including women and minorities.

§ 1214.1705 Selection of space flight participants.

(a) The agency will publicly announce each space flight participant opportunity through appropriate means, including notice in the FEDERAL REGISTER and press releases. Each such Announcement of Opportunity will include a listing of basic qualification requirements to be met (including those of § 1214.1704(b)), a statement of the specific National Aeronautics and Space Act purposes to which this opportunity is directed, what information is required of applicants to demonstrate their ability to fulfill those purposes, the criteria on which applicants will be judged, and administrative information such as to whom applications should be directed, the opening and closing dates for applications, and any other information or matters determined to be pertinent to the program in general and/or the specific flight.

(b) All applications received in response to the AO will be screened to eliminate those applicants not meeting the basic qualification requirements.

(c) Remaining applications will be forwarded to the outside review panel established for the announcement in question and composed of members appropriate to the specific purposes stated in that announcement. The review panel will evaluate all the applications and recommend to NASA a list of those applicants who appear most likely to meet the purposes.

(d) NASA selection of applicants qualified to undergo necessary training and be certified for flight will be made by the Committee, based upon criteria that include:

(1) Recommendation of the outside review panel.

(2) Ability to undergo successfully the necessary period of training to ensure adaptation to flight experience and mission activities.

(3) Ability to pass medical and psychological examinations to minimize the possibility of hazard to persons or missions.

(4) Adaptability to living and working in space.

(5) Willingness to enter into an agreement with NASA covering preflight, flight, and post-flight activities, with individual rights and responsibilities set forth in that agreeement.

(6) Satisfactory completion of a background investigation conducted to NASA's standards as adjudicated by the NASA Security Officer.

(e) The Committee will submit a list of those candidates suitable for selection to the NASA Administrator, who will select the requisite number to undergo the necessary training to prepare them for space flight.

(f) Those candidates who successfully complete the training will become qualified as space flight participants. Flight assignments will be made by the Administrator from this qualified group. NASA reserves the right to solicit additional space flight participant applications, if necessary.

(g) Authority to officially designate candidates for training, certify candidates as qualified space flight participants, and assign space flight participants to specific Space Shuttle flights is reserved to the Administrator.

§ 1214.1706 Program management.

The Associate Administrator for Space Flight is responsible for program management under the direction of the Committee chairperson.

§ 1214.1707 Media and public inquiries.

(a) The Associate Administrator for External Relations will respond to all inquiries directed to the agency concerning space flight participants and the process by which they are selected.

(b) The names of all applicants will be withheld from public release until the space flight participants are selected by the Administrator.

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

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APPENDIX A—ESTIMATED SERVICE RATES IN 1986 DOLLARS FOR TDRSS STANDARD SERVICES (BASED ON NASA ESCALATION ESTIMATE)

APPENDIX B—FACTORS AFFECTING STANDARD CHARGES

APPENDIX C—TYPICAL USER ACTIVITY TIMELINE

AUTHORITY: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

SOURCE: 48 FR 9845, Mar. 9, 1983, unless otherwise noted.

Subpart 1215.1—Use and Reimbursement Policy for Non-U.S. Government Users

§ 1215.100 General.

The Tracking and Data Relay Satellite System represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users. It is the objective of NASA to operate as efficiently as possible with the TDRSS. This is to the mutual benefit of all users. Such user consideration will permit NASA and non-NASA services to be delivered without compromising the mission objectives of any individual user. To encourage users toward achieving efficient TDRSS usage, a reimbursement policy has been established which is designed to influence users to operate in the most efficient and orderly manner possible. Additionally, the reimbursement policy is designed to comply with the Bureau of the Budget Circular A-25 on User Charges, dated September 23, 1959, which requires that a reasonable charge should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which a special benefit is derived.

§ 1215.101 Scope.

This subpart sets forth the policy governing TDRSS services provided to non-U.S. Government users and the reimbursement for rendering such services. It excludes TDRSS services provided as standard or optional services to Space Transportation System (STS) users under existing policy for Shuttle and Spacelab (14 CFR 1214.1 and 1214.2); that is user command and telemetry support which utilizes and is a part of the Shuttle or Spacelab communications system is a Shuttle/Spacelab service. Cooperative missions are also not under the purview of this Subpart. The arrangements for TDRSS services for cooperative missions will be covered in a Memorandum of Understanding (MOU), as a consequence of negotiations between NASA and the other concerned parties. Any MOU which includes provision for any TDRSS service will require signatory concurrence by the Associate Administrator for Space Tracking and Data Systems prior to dedicating Office of Space Tracking and Data Systems resources for support of a cooperative mission.

§ 1215.102 Definitions.

(a) *User.* Any non-U.S. Government representative or entity who contracts with NASA to use TDRSS services.

(b) *TDRSS.* The Tracking and Data Relay Satellite System including Tracking and Data Relay Satellites (TDRS), the White Sands Ground Terminal (WSGT), and the necessary TDRSS operational areas, interface devices and NASA communication circuits to unify the above into a functioning system. It specifically excludes the user ground system/TDRSS interface.

(c) *Bit stream.* The digital electronic signals acquired by TDRSS from the user craft or the user generated input commands for transmission to the user craft.

(d) *Flexible support.* Support requests which permit NASA, at its option, to schedule service at any time during the period of a single orbit of the user mission. Missions requiring multiple support periods during a single orbit may be classified as constrained support.

(e) *Constrained support.* Support requests which specify the exact times NASA is to provide service, or conditions of support which can be translated into exact times for service, such as sub-satellite positions, apogee/perigee position, etc., for which support is needed.

(f) *Scheduling service period.* One scheduled contact utilizing a single TDRS whereby the user by requesting service is allotted a block of time for operations between the user satellite and TDRSS.

§ 1215.103 Services.

(a) *Standard services.* These are services which the TDRSS is capable of providing to low-earth orbital user spacecraft or other terrestrial users.

(1) Tracking services.

(2) Data acquisition service.

(3) Command transmission service.

(4) Emergency line outage recording in the event of a communications failure between White Sands, Goddard Space Flight Center (GSFC), and Johnson Space Center (JSC).

(5) A weekly user spacecraft orbit determination in NASA standard orbital elements as determined by NASA for TDRSS target acquisition purposes.

(6) Delivery of user data at the NASA Ground Terminal (NGT) located at White Sands.

(7) Pre-launch support for data flow test and related activities which require use of a TDRS.

(8) Pre-launch support planning and documentation.

(9) Scheduling user services via TDRSS.

(10) Access to tracking data to enable users to perform orbit determination at their option.

(b) *Mission unique services.* Other tracking and data services desired by the user beyond the standard service and the charges therefor, will be identified and assessed on a case-by-case basis.

§ 1215.104 Apportionment and assignment of services.

No user may apportion, assign, or otherwise convey to any third party its TDRSS service. Each user may obtain service only through contractual agreement with NASA.

§ 1215.105 Delivery of user data.

(a) As a standard service, NASA will provide to the user its data from the TDRSS as determined by NASA in the form of one or more digital or analog bit streams synchronized to associated clock streams at the NGT.

(b) User data handling requirements beyond the NGT interface may be provided as a service without charge to the user, to the extent that NASA determines that it does not exceed NASA's standard communications system. Any additional data transport or handling requirements exceeding NASA's capability will be dealt with as a mission-unique service.

(c) No storage of the user data is provided in the standard service. NASA will provide short-term temporary recording of data at White Sands, only in event of a NASA Communications Network (NASCOM) link outage.

(d) NASA will provide TDRSS service on a "best efforts" basis and does not assume the risk of liability for damage to the user or third parties for failure to provide contracted-for services because of damage to the user's payload or other damage to the user or to third parties. The price for TDRSS service does not include a contingency or premium for this potential damage. The user will assume this risk of damage or obtain insurance to protect against that risk.

§ 1215.106 User command and tracking data.

(a) User command data may enter the TDRSS via the NASCOM interface at one of three locations:

(1) For Shuttle payloads which utilize the Shuttle commanding system, command data must enter the system via the Johnson Space Center (JSC) and is governed by the policies established for STS services (see § 1215.101).

(2) For free flyers and other payloads, command data must enter the system at the Goddard Space Flight Center (GSFC) if it is to be a standard service.

(3) The use of other command data entry points [e.g., the NASA Ground Terminal (NGT) at White Sands, NM, or Johnson Space Center (JSC), for payloads using an independent direct link from TDRS to the user payload] is considered to be a mission unique service.

(b) NASA is required to maintain the user satellite orbital elements to sufficient accuracy to permit the TDRS system to establish and maintain acquisition. This can be accomplished in two ways:

(1) The user can provide the orbital elements in a NASA format to GSFC to meet TDRSS operational requirements.

(2) The user shall insure that a sufficient quantity of tracking data is received at GSFC to permit the determination of the user satellite orbital elements. The charges for this service will be determined by using the on-orbit service rates.

§ 1215.107 User data security.

User data security is not provided by the TDRSS. Responsibility for data security resides solely with the user. User desiring data safeguards shall provide and operate, external to the TDRSS, the necessary equipment or systems to accomplish data security. Any such user provisions must be compatible with data flow through TDRSS and not interfere with other users.

§ 1215.108 Defining user service requirements.

Potential users should become familiar with TDRSS capabilities and constraints, which are detailed in the TDRSS User's Guide (GSFC document, STDN No. 101.2), as early as possible. This action allows the user to evaluate the trade-offs available among various TDRSS services, spacecraft design, operations planning, and other significant mission parameters. When these user evaluations have been completed, and the user desires to use TDRSS, the user should initiate a request for TDRSS service.

(a) Initial requests for TDRSS service from non-U.S. Government users should be addressed to NASA Headquarters, Code TX, TDRSS Program, Washington, D.C. 20546. Upon review and preliminary acceptance of the service requirements by NASA Headquarters, the appropriate areas of GSFC will be assigned to the project to produce the detailed requirements, plans and documentation necessary for support of the mission. Changes to user requirements shall be made as far in advance as possible and shall be submitted in writing to both NASA Headquarters, Code TX, TDRSS Program, and GSFC, Code 804, Greenbelt, Maryland 20771.

(b) Acceptance of user requests for TDRSS service is the sole prerogative of NASA. Although TDRSS represents a significant increase to current support capabilities, service capacity is finite, and service will be provided in accordance with operational priorities established by NASA. Request for services within priority groups shall be negotiated with non-NASA users on a first come, first service basis for inclusion into the TDRSS mission model.

§ 1215.109 Scheduling user service.

(a) User service shall be scheduled only by NASA. Scheduling refers to that activity occurring after the user has been accepted and placed in the TDRSS mission model as specified in § 1215.108(b). See Appendix C for a description of a typical user activity timeline.

(b) Schedule conflict will be resolved in general by application of principles of priority to user service requirements. Services shall be provided either as normally scheduled service or as emergency/disruptive update service. Priorities will be different for emergency/disruptive updates than for normal services.

(1) Normally scheduled service is service which is planned and ordered under normal operational conditions and is subject to schedule conflict resolution under normal service priorities. Priorities are established by the NASA Administrator or his/her designee. Requests for normally scheduled service must be received by the schedulers at the GSFC Network Control Center (NCC) no later than 45 minutes prior to requested support time.

(2) Normal scheduling principles of priority are generally ordered as follows beginning with the highest priority:

(i) Launch, reentry, landing of the STS Shuttle or launch of a NASA expendable launch vehicle.

(ii) NASA payloads/spacecraft.

(iii) Other payloads/spacecraft of interest to the United States.

(iv) Other payloads/spacecraft launched by a NASA launch vehicle.

(v) Other payloads/spacecraft.

(vi) Support of other launches.

(3) Exceptions to these priorities may be determined on a case-by-case basis with the NASA Administrator or his/her designee as the priorities stated in paragraph (b)(2) of this section are indicative of general rather than specific cases.

(4) Emergency service conditions are those requiring rapid response to changing user service requirements. Emergency service may be instituted under the following conditions:

(i) Circumstances which pose a threat to the security of the United States.

(ii) Circumstances which threaten human life.

(iii) Circumstances which threaten user mission loss.

(iv) Other circumstances of such a nature which make it necessary to preempt normally scheduled services.

(5) At times, emergency service requirements will override normal schedule priority. Under emergency service conditions, disruptions to schedule service will occur. As a consequence, users requiring emergency service shall be charged for emergency service at rate factors set forth in Appendix B.

(6) Disruptive updates are scheduled updates which by virtue of priorities, causes previously scheduled user's services to be rescheduled or deleted or are requested by the user less than 45 minutes prior to the scheduled support period.

(i) Disruptive updates will be charged at the same rates as emergency service. User initiated schedule requests which are received less than 45 minutes prior to the requested schedule support time will be considered a disruptive update.

(ii) User initiated schedule requests which are received more than 45 minutes and less than 12 hours prior to the scheduled support period will be acted upon as a routine input provided other users are unaffected. If other users are affected, the scheduling input will be considered a disruptive update and the appropriate charge factor will be applied.

(iii) The Network Control Center (NCC) at GSFC reserves the sole right to schedule, reschedule or cancel TDRSS service. Schedule changes brought about through no fault of the user are not charged the factor for a disruptive update.

(7) While the priority listing remains the general guide for establishing support availability, the NASA schedulers will exercise judgment and endeavor to see that lower priority users are not excluded from a substantial portion of their contracted-for service due to the requirements of higher priority users.

(8) When a user contracts for TDRSS service for an "operational satellite" which interfaces with a significant number of national and worldwide users on a regularly scheduled basis as opposed to a "research and development satellite," NASA will place special emphasis on the operational requirement when planning schedules. This should reduce the probability of losing perishable operational data such as meteorological, climate, or earth resources information.

(c) General user service requirements, which will be used for preliminary planning and mission modeling, should include as a minimum, the following:

(1) Date of service initiation.

(2) Expected date of service termination.

(3) The type of TDRSS services desired [e.g., multiple access, tracking, etc.].

(4) The frequency and duration of each service, including orbital position or time constraints on service delivery from a given spacecraft where appropriate.

(5) Orbital or trajectory parameters and tracking data requirements.

(6) Spacecraft events affecting tracking, telemetry or command requirements.

(7) Signal parameters and data rates by type of service, type and location of antennas and other related information dealing with user tracking, command, and data systems.

(8) Special test requirements, compatibility testing, data flows, simulations, etc.

(9) Identification of type and quantity of user information necessary for control functions, location of user control facility, and identification of communications requirements.

(10) Identification of ground communications requirements and interface points, including the level of support to be requested from NASCOM.

(d) To provide for effective planning, general service requirements should be provided at least 3 years before initiation of service. With these data NASA will determine whether the requested services can be provided.

(e) Detailed requirements for user services must be provided 18 months before the initiation of service. These data will be the basis for the technical definition of the Interface Control Document (ICD). If requirements are received late, necessitating extraordinary NASA activities [e.g., overtime, special printing of documents], such activities will be considered to be mission unique and their cost charged the user.

§ 1215.110 User cancellation of all services.

The user has the right to terminate its service contract with NASA at any time. A user who exercises this right after contracting for service shall pay the charge agreed upon for services previously rendered, and the cost incurred by the Government for support of pre-launch activities, services, and mission documentation not included in that charge. The user will remain responsible for the charges for any services actually provided.

§ 1215.111 User postponement of service.

The user may postpone the initiation of contract service (user launch date) by delivery of written notification to NASA Headquarters, Code TX. If NASA's written approval is not obtained for postponements which delay the initial contract start of service date by more than 6 months, the quantity of service provided may be affected due to changes in other support requirements. Therefore, the validity of previous estimates of predicted support availability may no longer be applicable.

§ 1215.112 User/NASA contractual arrangement.

(a) The NASA Administrator reserves the right to waive any portion of the reimbursement due to NASA under the provisions of the reimbursement policy.

(b) When NASA has determined that a potential user has not made sufficient progress toward concluding a contractual arrangement for service, after being placed in a mission model, NASA shall have the unilateral right to remove that user from the mission model.

(c) NASA shall have the right to determine unilaterally that the potential user has failed to make progress toward concluding a contractual arrangement.

§ 1215.113 User charges.

(a) The user shall reimburse NASA the sum of the charges for standard and mission unique services. Charges will be based on the service rates determined at the beginning of each calendar year and the service time scheduled for the user.

(b) For standard services the user shall be charged only for services rendered, except that if a total cancellation of service occurs, the users shall be charged in accordance with the provisions of § 1215.110.

(1) Standard services which are scheduled, and then cancelled by the user less than 12 hours prior to the start of that scheduled service period, will be charged as if the scheduled service actually occurred.

(2) The time scheduled by the user project shall include the slew time, set up and/or configuration time, TDRSS contact time, and all other conditions for which TDRSS services were allocated to the user.

(3) Charges will be accumulated by the minute, based on the computerized schedule/configuration messages which physically set up the TDRSS equipment at the start of a support period and free the equipment for other users at the end of a support period.

(c) The user shall reimburse NASA for the costs of any mission unique services provided by NASA for the user's benefit unless NASA obtains full cost reimbursement from another user for these mission unique services.

(d) Any person or entity which pays to NASA the initial administrative charge (see § 1215.115) does so with the understanding that it is not refundable whether or not an agreement is entered into with NASA for TDRSS services.

§ 1215.114 Service rates.

(a) Non-U.S. Government user rates will reflect TDRSS total operational and maintenance costs prorated to a per-minute basis.

(b) Rates for TDRSS services will be set by the Associate Administrator for Space Tracking and Data Systems each October for the following year, January through December. Rate variations will reflect changes in operating costs, loading formulas and escalation.

(c) Projected estimates will include escalation bases on the Bureau of Labor Statistics Index for compensation per hour—total private.

(d) Appendix A is provided for preliminary planning purposes only. It delineates the rate per minute by service and type of user. These rates are subject to change.

(e) The per minute charge for TDRSS service is computed by multiplying the charge per minute for the appropriate service by the number of minutes scheduled and the appropriate factor (for flexible, constrained or disruptive/emergency service).

[48 FR 9845, Mar. 9, 1983, as amended at 49 FR 10659, Mar. 22, 1984]

§ 1215.115 Payment and billing.

(a) To each user there will be an initial non-refundable administrative charge of $25,000 which is applicable toward TDRSS operational services.

(b) The procedure for billing and payment of standard TDRSS services is as follows:

(1) The calendar year is divided into two service periods, January through June and July through December. The charge for TDRSS service will be determined in October for the succeeding calendar year.

(2) The estimated cost of service, January through June period, will be due the previous July 1, and will be billed 60 days prior to the payment due date.

(3) The estimated cost of service, July through December period, will be due the previous January 1, and will be billed 60 days prior to the payment due date.

(4) Adjustments to the amounts prepaid will be made to the succeeding billings as the actual service time is tabulated. Amounts due to the user will be credited to the next service period or refunded to the user if no more service is to be provided.

(5) The total estimated cost of all standard pre-launch services such as mission planning, documentation, link analysis, testing, computer, human resources, etc., with the exception of TDRSS operational services, will be paid to the Government prior to NASA rendering such services. This advance payment will be applied as a credit to the charges billed for post-launch TDRSS operational services as specified in paragraphs (b)(1) through (4) of this section.

(c) Payment schedules for mission unique services will be mutually developed between NASA the user on a case-by-case basis, dependent upon level of engineering effort, long-lead items, special communication services or other considerations. Payment will generally be made prior to NASA incurring a cost for mission unique service.

(d) Late payments by the user will require the user to pay a late payment charge equal to 1½% per month of the unpaid balance calculated daily from the date the payment was due until the date payment is made.

APPENDIX A—ESTIMATED SERVICE RATES IN 1986 DOLLARS FOR TDRSS STANDARD SERVICES (BASED ON NASA ESCALATION ESTIMATE)

TDRSS user service rates for services rendered in CY 86 based on current projections in 1986 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $128.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is $28.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is $9.00 per minute for non-U.S. Government users.

[50 FR 2778, Jan. 22, 1985]

APPENDIX B—FACTORS AFFECTING STANDARD CHARGES

Charges for services shall be determined by multiplying the factors below by the base rates for standard services set forth in Appendix A.

	Flexible	Time or position constrained	Emergency or service disruptive updates
Single access service	1	[illegible]	2
Multiple access forward command service	.67	[illegible]	2

	Normal scheduled user support	Emergency or service disruptive updates
Multiple access return telemetry service	1	2

APPENDIX C—TYPICAL USER ACTIVITY TIMELINE

Time (approximate)	Activity
Project conceptualization (At least 3 years before launch Ref § 1215.108(a))	Request NASA Headquarters perform study to determine availability of TDRSS. $25,000 non-refundable charge for this service. Placement into mission model if accepted.
3 year before launch (Ref § 1215.109(c))	Submit general user requirements to permit preliminary planning. Begin payment for pre-mission activities. (Ref § 1215.115(b)(5).)
18 months before launch (earlier if interfacing is expected)	Provide detailed requirements for technical definition and development of operational documents and ICD's. (Ref § 1215.109(e).)
3 weeks prior to a scheduled support period (SSP)	Submit scheduling request to GSFC covering a weekly period.
2 weeks prior to an SSP	Receive schedule from GSFC based on principles of priority (§ 1215.109(b)(2)). Acknowledgement to GSFC required.
Up to 12 hours prior to an SSP	Can cancel an SSP without charge. (Ref § 1215.113(a)(1).)
Up to 45 minutes prior to an SSP	Can schedule an SSP if a time slot is available without impacting another user.
Between SSP minus 45 minutes and the SSP	Schedule requests will be charged at the disruptive update rate (Ref § 1215.109(h)(5)).
Real Time	Emergency service requests will be responded to per the priority system (Ref § 1215.109(b)(3)) and assessed the emergency service rate.

PART 1216—ENVIRONMENTAL QUALITY

Subpart 1216.1—Policy on Environmental Quality and Control

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Sec.

Subpart 1216.3—Procedures for Implementing the National Enviromental Policy Act (NEPA)

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OTHER REQUIREMENTS

1216.319 Environmental resources document.
1216.320 Environmental review and consultation requirements.
1216.321 Environmental effects abroad of major Federal actions.

AUTHORITY: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.); sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609); E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (43 FR 55978); and E.O. 12114, Jan. 4, 1979 (44 FR 1957), unless otherwise noted.

Subpart 1216.1—Policy on Environmental Quality and Control

SOURCE: 44 FR 44485, July 30, 1979, unless otherwise noted.

§ 1216.100 Scope.

This subpart sets forth NASA policy on environmental quality and control and the responsibilities of NASA officials in carrying out these policies.

§ 1216.101 Applicability.

This subpart is applicable to NASA Headquarters and field installations.

§ 1216.102 Policy.

NASA policy is to:

(a) Use all practicable means, consistent with NASA's statutory authority, available resources, and the national policy, to protect and enhance the quality of the environment;

(b) Provide for proper attention to and ensure that environmental amenities and values are given appropriate consideration in all NASA actions, including those performed under contract, grant, lease, or permit;

(c) Recognize the worldwide and long-range character of environmental concerns and, when consistent with the foreign policy of the United States and its own responsibilities, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(d) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decisionmaking for actions which may have an impact on the human environment;

(e) Pursue research and development, within the scope of NASA's authority or in response to authorized agencies, for application of technologies useful in the protection and enhancement of environmental quality;

(f) Initiate and utilize ecological and other environmental information in the planning and development of resource-oriented projects; and

(g) Invite cooperation, where appropriate, from Federal, State, local, and regional authorities and the public in NASA planning and decisionmaking processes.

§ 1216.103 Responsibilities of NASA officials.

(a) The Associate Administrator for External Relations or designee shall:

(1) Coordinate the formulation and revision of NASA policies and positions on matters pertaining to environmental protection and enhancement;

(2) Represent NASA in working with other governmental agencies and interagency organizations to formulate, revise, and achieve uniform understanding and application of governmentwide policies relating to the environment;

(3) Develop and ensure the implementation of agencywide standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(4) Develop, as an integral part of NASA's basic decision processes, procedures to ensure that environmental factors are properly considered in all proposals and decisions;

(5) Establish and maintain working relationships with the Council on Environmental Quality, Environmental Protection Agency, and other national, state, and local governmental agencies concerned with environmental matters;

(6) Acquire information for and ensure the preparation of appropriate NASA reports on environmental matters.

(b) Officials-in-Charge of Headquarters Offices and NASA Field Installation Directors are responsible for:

(1) Identifying matters under their cognizance which may affect protection and enhancement of environmental quality and for employing the proper procedures to ensure that necessary actions are taken to meet the requirements of applicable laws and regulations;

(2) Coordinating environmental quality-related activities under their cognizance with the Associate Administrator for External Relations; and

(3) Supporting and assisting the Associate Administrator for External Relations on request.

(c) Officials-in-Charge of Headquarters Offices are additionally responsible for:

(1) Giving high priority, in the pursuit of program objectives, to the identification, analysis, and proposal of research and development which, if conducted by NASA or other agencies, may contribute to the achievement of beneficial environmental objectives; and

(2) In coordination with the Associate Administrator for External Relations, making available to other parties, both governmental and nongovernmental, advice and information useful in protecting and enhancing the quality of the environment.

(d) NASA Field Installation Directors are additionally responsible for:

(1) Implementing the NASA policies, standards and procedures for the protection and enhancement of environmental quality and supplementing them as appropriate in local circumstances;

(2) Specifically assigning responsibilities for environmental activities under the installation's cognizance to appropriate subordinates, while providing for the coordination of all such activities; and

(3) Establishing and maintaining working relationships with national, state, regional and governmental agencies responsible for environmental regulations in localities in which the field installations conduct their activities.

Subpart 1216.2—Floodplain and Wetlands Management

AUTHORITY: Executive Orders 11988 and 11990; 42 U.S.C. 2473(c)(1).

SOURCE: 44 FR 1089, Jan. 4, 1979, unless otherwise noted.

§ 1216.200 Scope.

This Subpart 1216.2 prescribes procedures to:

(a) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands;

(b) Avoid direct or indirect support of floodplain and wetlands development wherever there is a practicable alternative;

(c) Reduce the risk of flood loss;

(d) Minimize the impact of floods on human health, safety and welfare;

(e) Restore, preserve and protect the natural and beneficial values served by floodplains and wetlands;

(f) Develop an integrated process to involve the public in the floodplain and wetlands management decision-making process;

(g) Incorporate the Unified National Program for Flood Plain Management; and,

(h) Establish internal management controls to monitor NASA actions to assure compliance with the Orders.

§ 1216.201 Applicability.

These procedures are applicable to Federal lands and facilities under the management control of NASA Headquarters and field installations regardless of location.

§ 1216.202 Responsibility of NASA officials.

(a) Directors of Field Installations and, as appropriate, the Associate Administrator for Management Operations at NASA Headquarters, are responsible for implementing the requirements and procedures prescribed in §§ 1216.204 and 1216.205.

(b) The Director, Facilities Division, NASA Headquarters, is responsible for overall coordination of floodplain and wetlands management activities, and for conducting periodic on-site reviews of each installation's floodplain and wetlands management activities to assure compliance with the Orders.

§ 1216.203 Definition of key terms.

(a) *Action*—any NASA activity including, but not limited to, acquisition, construction, modification, changes in land use, issuance of facilities use permits, and disposition of Federal lands and facilities.

(b) *Base flood*—is that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

(c) *Base floodplain*—the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

(d) *Critical action*—any activity for which even a slight chance of flooding would be too great, such as storing lunar samples or highly toxic or water reactive materials.

(e) *Facility*—any item made or placed by a person including buildings, structures and utility items, marine structures, bridges and other land development items, such as levees and drainage canals.

(f) *Flood or flooding*—a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(g) *Flood fringe*—that portion of the floodplain outside of the regulatory floodway (often referred to as "floodway fringe").

(h) *Floodplain*—the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain). A large portion of NASA coastal floodplains also encompasses wetlands.

(i) *Floodproofing*—the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce the effects of water entry.

(j) *Minimize*—to reduce to the smallest possible amount or degree.

(k) *One percent chance flood*—the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year, e.g., there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(l) *Practicable*—capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, cost or technology.

(m) *Preserve*—to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(n) *Regulatory floodway*—the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner; i.e., unconfined or unobstructed either horizontally or vertically to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program (NFIP)).

(o) *Restore*—to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(p) *Wetlands*—those areas that are frequently inundated by surface or ground water and normally support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, river overflows, mud flats, wet meadows, and natural ponds. Because all NASA wetlands lie in floodplains, and for purposes of simplifying the procedures of this subpart, floodplains will be understood as to encompass wetlands, except in cases where wetlands factors require special consideration. (Also see definition of floodplain.)

(q) *Support*—actions which encourage or otherwise provide incentives to undertake floodplain or wetlands development, such as extending roads or utilities into or near a floodplain, therefore making floodplain development more feasible.

§ 1216.204 General implementation requirements.

(a) Each NASA field installation shall prepare, if not already available, an installation base floodplain map based on the latest information and advice of the appropriate District Engineer, Corps of Engineers or, as appropriate, the Federal Insurance Administration, Department of Housing and Urban Development. The map shall delineate the limits of both the 100-year and 500-year floodplains. A copy of the map, approved by the Field Installation Director, will be provided to the Director, Facilities Division, NASA Headquarters, by February 28, 1979. The map will conform to the definitions and requirements specified in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030).

(b) For any proposed action or critical action, as defined in § 1216.203(a), using the approved floodplain map, the Field Installation Director, while concurrently seeking to avoid the floodplain, shall determine if the proposed action *will* or *will not* be located in, or may indirectly impact or indirectly support development in, the base (substitute "500-year" for "base" in critical action cases) floodplain and proceed accordingly:

(1) If the action or critical action *will* be located in the base floodplain or may indirectly impact or indirectly support floodplain development, and is not excepted under § 1216.204(h), field installations will adhere to the procedures prescribed in § 1216.205.

(2) If such action or critical action *will not* be located in the base floodplain, or is the type of action that will clearly nor indirectly impact or indirectly support floodplain development, the action may be implemented without further review or coordination, provided all other applicable NASA requirements and policies have been met.

(c) Any request for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, on a case-by-case basis, if the action proposed will be located in a floodplain and whether the proposed action is in accordance with Executive Orders 11988 and 11990.

(d) Each field installation shall: Take floodplain management and wetlands protection into account when formulating its water and land use plans—and when evaluating like plans of others—as an integral part of its facilities master planning activities; Restrict the use of land and water resources appropriate to the degree of flood hazard involved; and, Incorporate recommended Federal and State actions for the continuing unified program for planning and action at all levels of government to reduce the risk of flood losses in accordance with the Unified National Program for Flood

Plain Management (U.S. Water Resources Council, 1978).

(1) Descriptive documentation supporting these planning matters shall be included in the "land use" section of each field installation's facilities master plan as prescribed in NASA Management Instruction 7232.1, Master Planning of NASA Facilities. The evaluation and quantification of flood hazards should be expressed in terms of:

(i) Potential for monetary loss;

(ii) Human safety, health, and welfare;

(iii) Shifting of costs, damage or other adverse impacts to off-site properties; and,

(iv) Potential for affecting the natural and beneficial floodplain values.

(2) NASA shall provide appropriate guidance to applicants for facilities use permits and grants to enable them to similarly evaluate, in accordance with the Orders, the effects of their proposals in floodplains and wetlands. This evaluation will be a precondition of any NASA approval of such permit or grant involving floodplains or wetlands.

(e) Facilities to be located in floodplains will be constructed in accordance with the standards and criteria promulgated under the National Flood Insurance Program (NFIP). Deviations are allowed only to the extent that these standards are inappropriate for NASA operations, research and test activities. Because construction of NASA facilities will rarely be necessary in floodplains and wetlands, expertise in the latest flood proofing measures, standards and criteria will not be normally maintained within the NASA staff. To assure full compliance with the NFIP regulations, and that the Order's key requirement to minimize harm to or within the floodplain or wetlands is met, field installations will:

(1) Consult with the appropriate local office of the Corps of Engineers or FIA and/or U.S. Fish and Wildlife Service, as applicable, on a regular basis throughout the facility design or action planning phase. Documentation of this consultation will be recorded in the field installation's project file.

(2) Submit evidence of the successful completion of this consultation to the Director, Facilities Division, NASA Headquarters, prior to the start of project construction.

(f) If NASA property used or visited by the general public is located in an identified flood hazard area, the installation shall provide on structures, in this area and other places where appropriate (such as where roads enter the flood hazard area), conspicuous delineation of the 100-year and 500-year flood levels, flood of record, and probable flood height in order to enhance public awareness of flood hazards. In addition, field installations shall review their storm control and disaster plans to assure that adequate provision is made to warn and evacuate the general public as well as employees. These plans will include the integration of adequate warning time into such plans. The results of this review shall be submitted to the Director, Facilities Division, NASA Headquarters, by February 28, 1979.

(g) When property in floodplains is proposed for lease, permit, out-grant, easement, right-of-way, or disposal to non-Federal public or private parties, the field installation shall:

(1) Reference in the conveyance document (prepared by the General Services Administration in disposal actions) those uses that are restricted under identified Federal, State, and local floodplain regulations, such as State coastal management plans.

(2) Except where prohibited by law, attach other appropriate restrictions, equal to the Order's in scope and strictness, to the uses of properties by the grantee or purchaser and any successors which assure that:

(i) Harm to lives, property and floodplain values are identified; and

(ii) Such harm is minimized and floodplain values are restored and preserved.

(3) Withhold such properties from conveyance if the requirements of paragraphs (g)(1) and (2) of this section cannot be met.

(h) The NASA Administrator has determined that certain types of actions taken in coastal floodplains and wetlands typically do not possess the potential to result in long- or short-term adverse impacts associated with the occupancy or modification of floodplains, or result in direct or indirect support of floodplain development. Nevertheless, in undertaking these actions, any opportunities to minimize, restore, and preserve floodplain and wetlands values must be considered and implemented. With this understanding, for the following types of actions, Directors of Field Installations in coastal locations may determine that undertaking such actions does not warrant full application of the procedures prescribed in § 1216.205.

(1) Hazard mitigation actions taken by a field installation on an emergency basis to reduce and control hazards associated with established NASA test or operations activities in accordance with the field installation's approved Safety Plan. Any such action must be approved in writing by the Field Installation's Safety Officer, and the approval document retained in the Safety Office files.

(2) Repair, maintenance or modification to existing roadways, bridges and utility systems in coastal floodplains or wetlands which provide long-term support for major NASA operations and test facilities (usually located out of the base floodplain), provided such repair, maintenance or modification activities are of a routine or emergency nature for which the "no action" alternative is not practicable; and it is ostensibly evident that:

(i) The proposed action would not impact the floodplain or wetlands.

(ii) The only alternative would be to construct new duplicate facilities near the same site with attendant impacts on the floodplain or wetlands area.

(3) Rehabilitation and modification of existing minor technical facilities (such as camera pads, weather towers, repeater buildings), including the repair of such damaged facilities to a condition closely matching the original construction, provided it can be readily determined by Directors of Field Installations that there is no practicable alternative but to continue the activity in its current coastal floodplain site. In such cases, the sitings of such facilities must be rigidly constrained by nationally recognized master planning criteria, such as "line-of-sight, quantity-distance, and acoustic sound-pressure-level" factors. In addition, certification of these determinations by Directors of Field Installations will be retained in the project file.

§ 1216.205 Procedures for evaluating NASA actions impacting floodplains and wetlands.

(a) Before taking any action a determination shall first be made whether the proposed action will occur in or may adversely affect a floodplain or wetlands, using the method prescribed in § 1216.204(b).

(b) These procedures apply only to evaluations of those proposed actions which are to be located in or may adversely impact floodplains. These evaluations shall be made at the earliest practicable stage of advance planning, such as during facilities master plan development or when preparing preliminary engineering reports. These evaluations shall include analyses of harm to lives and property, the natural and beneficial values of floodplains and wetlands, and the cumulative impacts of multiple actions over the long term.

(1) Early public notice is the next step in the evaluation process and will normally be accomplished using only the appropriate State and areawide clearinghouses as identified in Office of Management and Budget (OMB) Circular A-95, and by coordinating with these clearinghouses as prescribed in NASA Management Instruction 8800.9, Coordination of NASA Facilities Planning and Projects. If, however, actions involving land acquisition or a major change in land or water use is proposed, the overall public audience will be as broad as reasonably possible including, but not limited to, adjacent property owners and residents, near-by floodplain residents and local elected officials. To assure their continuous interaction and involvement, the field installation will issue public notices and newsletters, and hold public hearing and/or work shops on a formalized scheduled basis to provide the opportunity for public input and understanding of the proposed action. Regardless of the scope of

action proposed, initially a notice will be provided to the appropriate OMB Circular A-95 clearinghouses that will not exceed three pages and will include:

(i) A location map of the proposed action.

(ii) The reasons why the action is proposed to be located in a floodplain.

(iii) A statement indicating whether the action conforms to applicable state and local floodplain protection standards.

(iv) A list of any NASA identified alternatives to be considered.

(v) A statement explaining the timing of public notice review actions to provide opportunities for the public to provide meaningful input.

(2) Working with the appropriate OMB Circular A-95 clearinghouses and, if applicable, other public groups and officials, to identify practicable alternatives in addition to those already identified by NASA. The alternatives will include:

(i) Carrying out the proposed action at a location outside the base floodplain (alternative sites).

(ii) Other means which accomplish the same purpose as the proposed action (alternative actions).

(iii) Taking no action, if the resulting hazards and/or harm to or within the floodplain overbalances the benefits to be provided by the proposed action.

(3) The costs and impacts of all practicable alternatives must now be fully determined to properly assess the practicability of avoiding the base floodplain, or of minimizing harm to the floodplain if alternatives directly or indirectly support floodplain development or have other adverse impacts.

(i) The basic criteria to be used in determining the impacts of the various alternatives appear in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030). These criteria discuss in detail the three basic types of impacts which are to be addressed:

(A) Positive and negative impacts (beneficial and harmful);

(B) Concentrated and dispersed impacts (impacts on-site, near-site, and remote from the installation); and

(C) Short and long-term impacts (include temporary changes and those that take the form of delayed changes resulting from the cumulative effects of many individual actions).

(ii) Also to be determined is the nature of resulting hazards and risk to lives and property; and the restoration and preservation of natural and beneficial floodplain and wetlands values.

(iii) In determining the type, magnitude, costs, timing factors, etc., of the impacts, it is emphasized that subjective assessments have little value. To qualify for inclusion in the evaluation process, an impact must be fully described and quantified in a measurable way compatible with good scientific or engineering practice. Briefly stated, an impact is effected by or based on, and limited to, a quantified alteration of existing coastal or riverine systems including:

(A) Anticipated flood levels, sheet flow, coursing and velocity of flood caused surface water;

(B) Ground water flows and recharge;

(C) Tidal flows;

(D) Topography; and,

(E) Ecology, including water quality, vegetation and the terrestrial and aquatic habitats.

(4) For the proposed action and those alternatives which will impact the floodplain or wetlands, additional analysis must be undertaken to minimize, restore and preserve the natural and beneficial floodplain or wetlands values. Because NASA does not retain expertise in these areas of floodplain management, field installations will consult, on a case-by-case basis, with the appropriate local office of the U.S. Fish and Wildlife Service to assure that, for each of the above alternatives, methods are prescribed which will:

(i) Minimize harm to lives and property from flood hazards;

(ii) Minimize harm to natural and beneficial values of floodplains and wetlands; and

(iii) Restore floodplains or wetlands values, if applicable, to the proposed action.

(5) The proposed action and alternatives shall now be comparatively evaluated taking into account the identi-

fied impacts, the steps necessary to minimize these impacts and opportunities to restore and preserve floodplain and wetlands values. The comparison will emphasize floodplain values.

(i) If this evaluation indicates that the proposed action in the base floodplain is still practicable, consider limiting the action so that a non-floodplain site could be more practicable.

(ii) If the proposed action is outside the floodplain but has adverse impacts or supports floodplain development, consider modifying or relocating the action to eliminate or reduce these effects or even taking no action.

(6) If, upon completing the comparative evaluation, the Field Installation Director determines that the only practicable alternative is locating in the base floodplain, a statement of findings and public explanation must be provided to all those who have received the early public notice, and specifically to the appropriate OMB Circular A-95 clearinghouses, and will include as a minimum:

(i) The reasons why the proposed action must be located in the floodplain.

(ii) A statement of all significant facts considered in making the determination including alternative sites and actions.

(iii) A statement indicating whether the actions conform to applicable State and local floodplain protection standards.

(iv) In cases where land acquisition or major changes in land use are involved, it may also be appropriate to include:

(A) A provision for publication in the Federal Register or other appropriate vehicle.

(B) A description of how the activity will be designed or modified to minimize harm to or within the floodplain.

(C) A statement indicating how the action affects natural or beneficial floodplain or wetlands values.

(D) A statement listing other involved agencies and individuals.

(7) After a reasonable period (15 to 30 days) to allow for public response, the proposed action may proceed through the normal NASA approval process, or if disposal is anticipated, the action can be implemented in accordance with Federal Property Management Regulations real property disposal procedures. If, however, significant new information is revealed in comments by the public, the field installation shall re-evaluate the proposed action in accordance with the provisions of paragraph (b)(5) of this section.

(8) For major NASA actions significantly affecting the quality of the human environment, the evaluations required above will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act.

(9) In accordance with § 1216.202(b), the Director, Facilities Division, NASA Headquarters, will conduct periodic on-site reviews to assure that the action is carried out in accordance with the stated findings and plans for the proposed action, in compliance with the orders.

Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

Source: 44 FR 44485, July 30, 1979, unless otherwise noted.

§ 1216.300 Scope.

This subpart sets forth NASA procedures implementing the provisions of section 102(2) of the National Environmental Policy Act (NEPA). The NASA procedures of this subpart supplement the regulations of the Council on Environmental Quality (43 FR 55978) which establish uniform procedures for implementing those provisions of NEPA.

§ 1216.301 Applicability.

(a) This subpart is applicable to NASA Headquarters and field installations.

(b) The procedures established by this subpart apply to all NASA actions which may have an impact on the quality of the environment. These actions may fall within any of the three NASA budget categories: Research and Development (R&D), Construction of Facilities (CofF), and Research and Program Management (R&PM) or, if not involving budget authority or other Congressional approval, may be separate from the categories.

§ 1216.302 Definition of key terms.

The definitions contained within Part 1508, *Terminology and Index*, CEQ Regulations, 43 FR 55978, apply to Subpart 1216.3. Additional definitions, necessary for the purpose of this subpart, are as follows:

(a) *Budget line items.* The individual items in the annual NASA authorization legislation which are used here to classify the range of NASA actions. The three main budget line items are:

(1) *Research and Development (R&D).* Those activities directed towards attaining the objectives of a specific mission, project, or program. All NASA's aeronautics and space program elements are categorized within the R&D program categories. R&D funds are expended chiefly for contracted research and development and for research grants. Some R&D funds are also expended in support of in-house research (e.g., equipment purchases and other research support, but *not* civil service salaries).

(2) *Research and Program Management (R&PM).* Those activities directed towards the general support of the NASA institution charged with the conduct of the aeronautics and space program. R&PM funds are expended for the NASA civil service work force (both for performing in-house R&D and for planning, managing, and supporting contractor and grantee R&D), and for other general supporting functions.

(3) *Construction of Facilities (C of F).* Those activities directed towards construction of new facilities; repair, rehabilitation, and modification of existing facilities; acquisition of related facility equipment; design of facilities projects; and advance planning related to future facilities needs.

(b) *Construction of facilities project.* The consolidation of applicable specific individual types of facility work, including related collateral equipment, which is required to fully reflect all of the needs, generally relating to one facility, which have been or may be generated by the same set of events or circumstances which are required to be accomplished at one time in order to provide for the planned initial operational use of the facility or a discrete portion thereof. Facility projects are subject to the NASA decision processes of § 1216.304.

(c) *Environmental analysis.* The analysis of the environmental effects of proposed actions, including alternative proposals. The analyses are carried out from the very earliest of planning studies for the action in question, and are the materials from which the more formal environmental assessments, environmental impact statements, and public record of decisions are made.

(d) *Institutional action.* An action to establish, change, or terminate an aspect of the NASA institution, defined as the total NASA resource (plant, employees, skills).

(e) *R&D project.* A discrete research and development activity, with a scheduled beginning and ending, which normally involves one of the following primary purposes:

(1) The design, development, and demonstration of major advanced technology hardware items;

(2) The design, construction, and operation of a new launch vehicle (and associated ground support) during its research and development phase; and

(3) The construction and operation of one or more aeronautics or space vehicles (and necessary ground support) in order to accomplish a scientific or technical objective. R&D projects are each subelements in the NASA R&D budget line item. R&D projects are subject to the decision processes of § 1216.304.

§ 1216.303 Responsibilities of NASA officials.

(a) The Associate Administrator for External Relations or designee, who is responsible for developing the procedures of this subpart and for ensuring that environmental factors are properly considered in all NASA planning and decisionmaking, shall:

(1) Monitor these processes to ensure that the agency procedures are achieving their purposes;

(2) Advise line management and inform NASA employees of technical and management requirements of en-

vironmental analysis, of appropriate expertise available in and out of NASA, and—with the assistance of the NASA General Counsel—of relevant legal developments; and

(3) Consolidate and transmit to the appropriate parties NASA comments on environmental impact statements and other environmental reports prepared by other agencies.

(b) Officials-in-Charge of Headquarters Offices (hereafter termed "Headquarters officials") are responsible for implementing the procedures established by these regulations for the consideration and documentation of the environmental aspects of the decision processes in their respective areas of responsibility.

(c) The Director, Office of Legislative Affairs, is responsible for ensuring that legislative environmental impact statements accompany NASA recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for External Relations, the Comptroller, and General Counsel will provide guidance as required.

[44 FR 44485, July 30, 1979, as amended at 44 FR 49650, Aug. 24, 1979]

AGENCY PROCEDURES

§ 1216.304 Major decision points.

The possible environmental effects of a proposed action must be considered, along with technical, economic, and other factors, in the earliest planning. At that stage, the responsible Headquarters official shall begin the necessary steps to comply with all the requirements of section 102(2) of the National Environmental Policy Act of 1969. Major NASA activities, particularly R&D and facility projects, generally have four distinct phases: The conceptual study phase; the detailed planning/definition phase; the development/construction phase; and the operation phase. (Other NASA activities have fewer, less well-defined phases, but can still be characterized by phases representing general or feasibility study, detailed planning or definition, and implementation.) Environmental documentation shall be linked to major decision points as follows:

(a) Completion of an environmental assessment and the determination as to whether an environmental impact statement is required must be made prior to the decision to proceed from the conceptual study phase to the detailed planning/definition phase of the proposed action. For example, this determination must be concurrent with:

(1) Proposal of an R&D project for detailed planning and project definition;

(2) Proposal of a major Construction of Facilities project for detailed planning and project definition;

(3) Proposal of an institutional action (other than a facility project) for detailed planning and definition; and

(4) Proposal of a plan to define changes in an approved project.

(b) The final environmental impact statement (EIS) should be completed and circulated prior to the decision to proceed from the detailed planning/definition phase to the development/construction (or implementation) phase of the proposed action. For example, the EIS should be completed by, and incorporated with:

(1) Proposal of an R&D project for development/construction;

(2) Proposal of a major Construction of Facilities project for development/construction;

(3) Proposal to undertake a significant institutional action (other than a facility project); and

(4) Proposal to implement a program change.

§ 1216.305 Criteria for actions requiring environmental assessments.

(a) Whether a proposed NASA action within the meaning of the CEQ Regulations (43 FR 55978) requires the preparation of an environmental assessment, an environmental impact statement, both, or neither, will depend upon the scope of the action and the context and intensity of any environmental effects expected to result. A NASA action shall require the preparation of an environmental assessment (§§ 1501.3 and 1508.9 of the CEQ Regulations) provided the action is not one normally requiring an environmental impact statement (paragraph (c)) or it is not categorically excluded from the requirement for an environmental assessment and an environmental impact statement (paragraph (d)).

(b) Specific NASA actions normally requiring an environmental assessment are:

(1) Specific spacecraft development and flight projects in space science.

(2) Specific spacecraft development and flight projects in space and terrestrial applications.

(3) Specific experimental projects in aeronautics and space technology and energy technology applications.

(4) Development and operation of new space transportation systems and advanced development of new space transportation and spacecraft systems.

(5) Reimbursable launches of non-NASA spacecraft or payloads.

(6) Major Construction of Facilities projects.

(7) Actions to alter ongoing operations at a NASA installation which could lead, either directly or indirectly, to natural or physical environmental effects.

(c) NASA actions expected to have a significant effect upon the quality of the human environment shall require an environmental impact statement. For these actions an environmental assessment is not required. Criteria to be used in determining significance are given in § 1508.27 of the CEQ Regulations (43 FR 55978). Specific NASA actions requiring environmental impact statements, all in the R&D budget category, are as follows:

(1) Development and operation of new launch vehicles.

(2) Development and operation of space vehicles likely to release substantial amounts of foreign materials into the earth's atmosphere, or into space.

(3) Development and operation of nuclear systems, including reactors and thermal devices used for propulsion and/or power generation. Excluded are devices with millicurie quantities or less of radioactive materials used as instrument detectors and small radioisotope heaters used for local thermal control, provided they are properly contained and shielded.

(d) NASA actions categorically excluded from the requirements to prepare either an environmental assessment or an EIS (§ 1508.4 of the CEQ Regulations) fit the following criteria: They are each sub-elements of an approved broadbased level-of-effort NASA science and technology program (basic research, applied research, development of technology, ongoing mission operations), facility program, or institutional program, and they are each managed relatively independently of other related sub-elements by means of separate task orders, Research and Technology Operating Plans, etc. Specific NASA actions fitting these criteria and thus categorically excluded from the requirements for environmental assessments and environmental impact statements are:

(1) R&D activities in space science (e.g., Physics and Astronomy Research and Analysis, Planetary Exploration Mission Operations and Data Analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (e.g., Resource Observations Applied Research and Data Analysis, Technology Utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (e.g., Research and Technology Base, Systems Technology Programs) other than experimental projects.

(4) R&D activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects but no natural or physical environmental effects.

(e) Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, it is not excluded from the requirement for an environmental analysis conducted during the earliest planning phases. If that analysis shows that the action deviates from the criteria for exclusion and it is concluded that there may be significant environmental effects, an environmental assessment must be carried out. Based upon that assessment, a determination must then be made whether or not to prepare an environmental impact statement.

§ 1216.306 Preparation of environmental assessments.

(a) For each NASA action meeting the criteria of § 1216.305(b), and for other actions as required, the responsible Headquarters official shall prepare an environmental assessment (§§ 1501.3 and 1508.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required.

(b) If the determination is that no environmental impact statement is required, the Headquarters official shall, in coordination with the Associate Administrator for External Relations, prepare a "Finding of No Significant Impact." (See § 1508.13 of the CEQ Regulations.) The "Finding of No Significant Impact" shall be made available to the affected public through direct distribution and publication in the FEDERAL REGISTER.

(c) If the determination is that an environmental impact statement is required, the Headquarters official shall proceed with the "notice of intent to prepare an EIS" (see § 1508.22 of the CEQ Regulations). The Headquarters official shall transmit this notice to the Associate Administrator for External Relations for review and subsequent publication in the FEDERAL REGISTER (see § 1507.3(e) of the CEQ Regulations). The Headquarters official shall then apply procedures set forth in § 1216.307 to determine the scope of the EIS and proceed to prepare and release the environmental statement in accordance with the CEQ Regulations and the procedures of this subpart.

(d) Environmental assessments may be prepared for any actions, even those which meet the criteria for environmental impact statements (§ 1216.305(c)) or for categorical exclusion (§ 1216.305(d)), if the responsible Headquarters official believes that the action may be an exception or that an assessment will assist in planning or decisionmaking.

§ 1216.307 Scoping.

The responsible Headquarters official shall conduct an early and open process for determining the scope of issues to be addressed in environmental impact statements and for identifying the significant issues related to a proposed action. The elements of the scoping process are defined in § 1501.7 of the CEQ Regulations and the process must include considerations of the range of actions, alternatives, and impacts discussed in § 1508.25 of the CEQ Regulations. The range of environmental categories to be considered in the scoping process shall include, but not be limited to:

(a) Air quality;

(b) Water quality;

(c) Waste generation, treatment, transportation disposal and storage;

(d) Noise, sonic boom, and vibration;

(e) Toxic substances;

(f) Biotic resources;

(g) Radioactive materials and nonionizing radiation;

(h) Endangered species;

(i) Historical, archeological, and recreational factors;

(j) Wetlands and floodplains; and

(k) Economic, population and employment factors, provided they are interrelated with natural or physical environmental factors.

§ 1216.308 Preparation of draft statements.

(a) The responsible Headquarters official shall prepare the draft environmental impact statement in the manner provided in Part 1502 of the CEQ Regulations and shall submit the draft statement and any attachments to the Associate Administrator for External Relations for NASA review prior to any formal review outside NASA. This submission shall be accompanied by a list of Federal, state, and local officials (Part 1503 of the CEQ Regulations) and a list of other interested parties (§ 1506.6 of the CEQ Regulations) from whom comments should be requested.

(b) After the NASA review is completed, the Associate Administrator for External Relations shall submit the approved draft statement to the Environmental Protection Agency (EPA), Office of Environmental Review, and shall seek the views of appropriate agencies and individuals in accordance with Part 1503 and § 1506.6 of the CEQ Regulations.

(c) Comments received shall be provided to the originating official for consideration in preparing the final statement. To the extent possible, requirements for review and consultation with other agencies on environmental matters established by statutes other than NEPA, such as the review and consultation requirements of the Endangered Species Act of 1973, as amended, should be met prior to or through this review process (§ 1216.320).

[44 FR 44485, July 30, 1979, as amended at 44 FR 49650, Aug. 24, 1979]

§ 1216.309 Public involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Director, Management Support Office (Code LB), NASA, Washington, DC 20546, 202-755-8383. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

(b) Responsible Headquarters officials and NASA Field Installation Directors shall identify those persons, community organizations, and environmental interest groups who may be interested or affected by the proposed NASA action and who should be involved in the NEPA process. They shall submit a list of such persons and organizations to the Associate Administrator for External Relations at the same time they submit:

(1) A recommendation regarding a "Finding of No Significant Impact."

(2) A "Notice of Intent to Prepare an EIS."

(3) A recommendation for public hearings.

(4) A preliminary draft EIS.

(5) A preliminary final EIS.

(6) Other preliminary environmental documents (§ 1216.321(d)).

(c) The Associate Administrator for External Relations may modify such lists referred to in paragraph (b) as appropriate to ensure that NASA shall comply, to the fullest extent practicable, with § 1506.5 of the CEQ Regulations and § 2-4(d) of Executive Order 12114.

(d) The decision whether to hold public hearings shall be made by the Associate Administrator for External Relations in consultation with the General Counsel.

§ 1216.310 Preparation of final statements.

(a) After conclusion of the review process with other Federal, state, and local agencies and the public, the responsible Headquarters official shall consider all suggestions, revise the statement as appropriate, and forward the proposed final statement to the Associate Administrator for External Relations. The Associate Administrator for External Relations shall submit the approved final statement to the EPA Office of Environmental Review, to all parties who commented, and to other interested parties in accordance with CEQ Regulations.

(b) Each draft and final statement, the supporting documentation, and the record of decision shall be available for public review and copying at the office of the responsible Headquarters official, or at the office of a suitable designee. Copies of draft and final environment impact statements shall also be available at the NASA Information Center, 600 Independence Avenue, SW, Washington, DC 20546; at information centers at appropriate NASA field installations; and at appropriate state and local clearinghouses.

[44 FR 44485, July 30, 1979, as amended at 44 FR 49650, Aug. 24, 1979]

§ 1216.311 Record of the decision.

At the time of the decision on the proposed action, the originating Headquarters official shall consult with the Associate Administrator for External

Relations and prepare a concise public record of the decision. (See § 1505.2 of the CEQ Regulations.)

§ 1216.312 Timing.

(a) Environmental impact statements are drafted when the Headquarters official has determined that the statement shall be prepared. No decision to proceed to the development/construction (or implementation) phase of the proposed action (the major decision point of § 1216.304(b)) shall be made by NASA until the later of the following dates (§ 1506.10 of the CEQ Regulations):

(1) Ninety days after publication of an EPA notice of a NASA draft EIS.

(2) Thirty days after publication of an EPA notice of a NASA final EIS.

(b) When necessary to comply with other specific statutory requirements, NASA shall consult with and obtain from EPA time periods other than those specified by the Council for timing of agency action.

§ 1216.313 Implementing and monitoring the decision.

(a) Section 1505.3 of the CEQ Regulations provides for agency monitoring to assure that mitigation measures and other commitments associated with the decision and its implementation and described in the EIS are carried out and have the intended effects.

(b) The responsible Headquarters official shall, as necessary, conduct the required monitoring and shall provide periodic reports as required by the Associated Administrator for External Relations.

If the monitoring activity indicates that resulting environmental effects differ from those described in the current documents, the Headquarters official shall reassess the environmental impact and consult with the Associate Administrator for External Relations to determine the need for additional mitigation measures and whether to prepare a supplement to the EIS (see § 1502.9 of the CEQ Regulations).

§ 1216.314 Tiering.

Actions which are the subject of an environmental impact statement and which represents projects of broad scope may contain within them component actions of narrower scope, perhaps restricted to individual sites of activity or sequential stages of a mission, and which themselves may require environmental assessments and, where necessary, environmental impact statements. The CEQ Regulations provide that agencies may use "Tiering" (§ 1508.28 of the CEQ Regulations) of environmental impact statements to relate such broad and narrow actions. When employing tiering, Headquarters officials shall, by reference, make maximum use of environmental documentation already available, and avoid repetition.

§ 1216.315 Processing legislative environmental impact statements.

(a) Preparation of a legislative environmental impact statement shall conform to the requirements of § 1506.8 of the CEQ Regulations. The responsible Headquarters official, in coordination with the Associate Administrator for External Relations, shall identify those NASA recommendations or reports on legislation that would require preparation of environmental impact statements in accordance with criteria set forth in § 1216.305.

(b) For the purposes of this provision, "legislation" not only excludes requests for appropriations (§ 1508.17 of the CEQ Regulations), but also excludes the annual authorization bill submitted to the Congress.

[44 FR 44485, July 30, 1979, as amended at 44 FR 49650, Aug. 24, 1979]

§ 1216.316 Cooperating with other agencies and individuals.

(a) The Associate Administrator for External Relations shall ensure that NASA officials have an opportunity to cooperate with other agencies and individuals. He/she shall keep abreast of the activities of Federal, state, and local agencies, particularly activities in which NASA has expertise or jurisdiction by law (see § 1508.15 of the CEQ Regulations). He/she shall inform the responsible Headquarters official of the need for cooperation as necessary.

(b) At the request of the Associate Administrator for External Relations, Headquarters officials shall initiate discussions with another Federal agency concerning those activities which may be the subject of that agency's EIS on which NASA proposes to comment.

(c) At the request of the Associate Administrator for External Relations, the responsible Headquarters official shall, in the interest of eliminating duplication, prepare joint analyses, assessments, and statements with state and local agencies. These joint environmental documents shall conform with the requirements of these procedures and overall NASA policy.

(d) Because of the uniqueness of NASA's aerospace activities, it is unlikely that NASA will have the opportunity to "adopt" environmental statements prepared by other agencies (§ 1506.3 of the CEQ Regulations). However, should the responsible NASA official wish to adopt a Federal draft or final environmental impact statement or protion thereof, he/she shall consult with the Associate Administrator for External Relations to determine whether that statement meets NASA requirements.

(e) From time to time, there may be disagreements between NASA and other Federal agencies regarding which agency has primary responsibility to prepare an environmental impact statement in which both parties are involved. The Headquarters official with primary responsibility for the activity in question shall consult with the associate Administrator for External Relations to resolve such questions in accordance with § 1501.5 of the CEQ Regulations.

(f) Responsibility for the environmental analyses and any necessary environmental assessments and environmental impact statements required by permits, leases, easements, etc., proposed for issuance to non-Federal applicants rests with the Headquarters official responsible for granting of that permit, lease, easement, etc. The responsible Headquarters official shall consult with the Associate Administrator for External Relations for advice on the type of environmental information needed from the applicant and on the extent of the applicant's participation in the necessary environmental studies and their documentation.

§ 1216.317 Classified information.

Environmental assessments and impact statements which contain classified information to be withheld from public release in the interest of national security or foreign policy shall be organized so that the classified portions are appendices to the environmental document itself. The classified portion shall not be made available to the public.

§ 1216.318 Deviations.

From time to time there will arise good and valid reasons for a deviation from these procedures. These procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the proposed deviation and supporting rationale shall be forwarded to the Associate Administrator for External Relations. Unless such documentation is received, it will be assumed that each planning and decisionmaking action is in accordance with these procedures.

OTHER REQUIREMENTS

§ 1216.319 Environmental resources document.

Each Field Installation Director shall ensure that there exists an environmental resources document which describes the current environment at that field installation, including current information on the effects of NASA operations on the local environment. This document shall include information on the same environmental effects as included in an environmental impact statement (See § 1216.307). This document shall be coordinated with the Associate Administrator for External Relations and shall be published in an appropriate NASA report category for use as a reference document in preparing other environmental documents (e.g., environmental impact statements for proposed actions to be located at the NASA field installation in question). The Director of each NASA field installation shall ensure that existing resource documents are reviewed and updated, if necessary, by December 31, 1980, and at appropriate intervals thereafter.

§ 1216.320 Environmental review and consultation requirements.

(a) Headquarters officials and Field Installation Directors shall, to the maximum extent possible, conduct environmental analyses, assessments, and any impact statement preparation concurrently with environmental reviews required by the laws and regulations listed below:

(1) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(f)) requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a NASA proposed action. Evaluation of the impact of the NASA action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comments.

(2) Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.) requires indentification of and consultation on aspects of the NASA action that may affect listed species or their habitat. A written request for consultation, along with the draft statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the Region where the action will be carried out.

(3) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), as implemented by 14 CFR Subpart 1216.2—Floodplains and Wetlands Management, prescribe procedures to avoid adverse impacts associated with the occupancy and modification of floodplains and wetlands and require identification and evaluation of actions which are proposed for location in or which may affect a floodplain or wetland. A comparative evaluation of such actions shall be discussed in draft environmental impact statements and transmitted to appropriate A-95 clearing-houses for comments.

(b) Other environmental review and consultation requirements peculiar to NASA, if any, shall be identified as a part of a NASA environmental handbook to be prepared.

§ 1216.321 Environmental effects abroad of major Federal actions.

(a) In accordance with these procedures and E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (44 FR 1957), dated January 4, 1979, the Headquarters official shall analyze actions under his/her cognizance with due regard for the environmental effects abroad of such actions. The Headquarters official shall consider whether such actions involve:

(1) Potential environmental effects on the global commons (i.e., oceans and the upper atmosphere);

(2) Potential environmental effects on a foreign nation not participating with or not otherwise involved in the NASA activity;

(3) The export of products or facilities producing products (or emissions/effluents) which in the U.S. are prohibited or strictly regulated because their effects on the environment create a serious public health risk. The Associate Administrator for External Relations will provide additional guidance regarding the types of chemical, physical, and biological agents involved.

(4) A physical project which, in the U.S., would be prohibited or strictly regulated by Federal law to protect the environment against radioactive substances;

(5) Potential environmental effects on natural and ecological resources of global importance and which the President in the future may designate (or which the Secretary of State designates pursuant to international treaty). A list of any such designations will be available from the Office of the Associate Administrator for External Relations.

(b) Prior to decisions (§ 1216.304) on any action falling into the categories specified in paragraph (a), the Headquarters official shall make a determination whether such action may have a significant environmental effect abroad.

(c) If the Headquarters official determines that the action *will not have* a significant environmental effect abroad, he/she shall prepare a memorandum for the record which states the reasoning behind such a determination. A copy of the memorandum shall be forwarded to the Associate Administrator for External Relations. Note that these procedures do not allow for categorical exclusions (E.O. 12114, section 2-5(d)).

(d) If the Headquarters official determines that an action *may have* a significant environmental effect abroad, he/she shall consult with the Associate Administrator for External Relations and the Director, International Affairs Division. The Associate Administrator for External Relations, in coordination with the Director, International Affairs Division, shall (as specified in E.O. 12114) make a determination whether the subject action requires:

(1) An environmental impact statement (an EIS will be required if there are significant effects on the global commons);

(2) Bilateral or multilateral environmental studies; or

(3) Concise reviews of environmental issues.

(e) When informed of the determination of the Associate Administrator for External Relations, the Headquarters official shall proceed to take the necessary actions in accordance with these implementing procedures.

(f) The Associate Administrator for External Relations shall, in coordination with the Director, International Affairs Division, determine when an affected nation shall be informed regarding the availability of documents referred to in paragraph (d) and coordinate with the Department of State all NASA communications with foreign governments concerning environmental matters as related to E.O. 12114 (44 FR 1957).

PART 1221—THE NASA SEAL AND OTHER DEVICES, AND THE CONGRESSIONAL SPACE MEDAL OF HONOR

Subpart 1221.1—NASA Seal, Insignia, Logotype Insignia, Program and Astronaut Badges, and Flags

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APPENDIX A—CONGRESSIONAL SPACE MEDAL OF HONOR

Subpart 1221.1—NASA Seal, Insignia, Logotype Insignia, Program and Astronaut Badges, and Flags

AUTHORITY: 42 U.S.C. 2472(a) and 2473(b)(1).

SOURCE: 48 FR 6318, Feb. 11, 1983, unless otherwise noted.

§ 1221.100 Scope.

This subpart sets forth the policy governing the use of the NASA Seal, the NASA Insignia, the NASA Logotype Insignia, NASA Program and Astronaut Badges, and the NASA Flags.

§ 1221.101 Policy.

(a) The NASA Seal, the NASA Insignia, the NASA Logotype Insignia, NASA Program and Astronaut Badges, and the NASA Flags, as prescribed in §§ 1221.102 through 1221.109 of this subpart, shall be used exclusively to represent NASA, its programs, projects, functions, activities, or elements. The use of any devices other than those provided by or subsequently approved in accordance with the provisions of this subpart is prohibited.

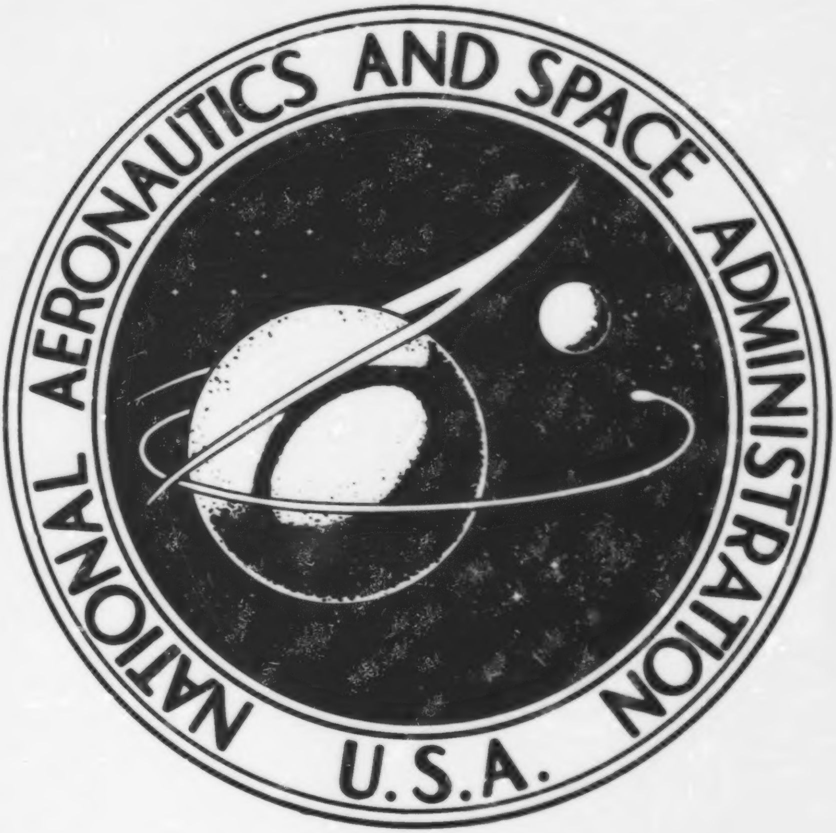
(b) The use of the devices prescribed herein shall be governed by the provisions of this subpart. The use of the devices prescribed herein for any purpose other than as authorized by this subpart is prohibited. Their misuse shall be subject to the penalties authorized by statute, as set forth in § 1221.116, and shall be reported as provided in § 1221.117.

(c) Any proposal for a new NASA Insignia, NASA Logotype Insignia, NASA Program Badge and Astronaut Badge, or for modification to those prescribed herein shall be processed in accordance with § 1221.115.

§ 1221.102 Establishment of the NASA Seal.

The NASA Seal was established by Executive Order 10849 (24 FR 9559), November 27, 1959, as amended by Executive Order 10942 (24 FR 4419), May 22, 1961. The NASA Seal, established by the President, is the Seal of the Agency and symbolizes the achievements and goals of NASA and the United States in aeronautical and space activities. The NASA Seal shall be used as set forth in § 1221.110

FIGURE A



The NASA Seal

Technical Description:

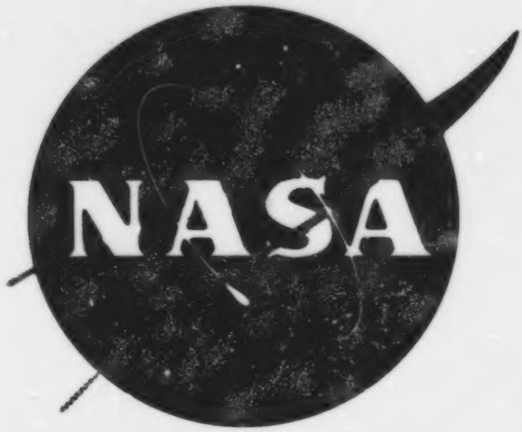
The official seal of the National Aeronautics and Space Administration is a disc of blue sky strewn with white stars, to dexter a large yellow sphere bearing a red flight symbol apex in upper sinister and wings enveloping and casting a brown shadow upon the sphere, all partially encircled with a white horizontal orbit, in sinister a small light blue sphere; circumscribing the disc a white band edged gold inscribed "National Aeronautics and Space Administration U.S.A." in red letters.

BEST COPY AVAILABLE

§ 1221.103 Establishment of the NASA Insignia.

The NASA Insignia was designed by the Army Institute of Heraldry, and approved by the Commission of Fine Arts and the NASA Administrator. It symbolizes NASA's role in aeronautics and space in the early years of the Agency and has been retired. It is used only in an authentic historical context, and only with prior written approval of the NASA Administrator.

FIGURE B



The NASA Insignia

REPRODUCTION

Black-on-white or single color:	As shown
Two-color:	Dark blue sky background; solid wing configuration; white inner elliptical flight path, stars, and letters NASA.

SIZE:

The Insignia may be reproduced or used in various sizes. Size to be determined on basis of (a) desired effect for visual identification or publicity purposes, (b) relative size of the object on which Insignia is to appear, and (c) consideration of any design, layout, reproduction, or other problems involved.

RESTRICTION:

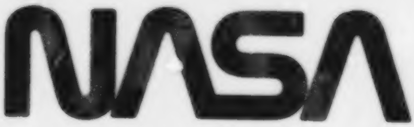
The NASA Insignia will not be used for any purpose without the written approval of the Administrator.

BEST COPY AVAILABLE

§ 1221.104 Establishment of the NASA Logotype Insignia.

The NASA Logotype Insignia, to be referred to as the NASA Logotype, was established by the NASA Administrator as the signature and design element for all visual communications formerly reserved for the NASA Insignia. The NASA Logotype was developed under the Federal Design Improvement Program initiated by the President in 1972 and approved by the Commission of Fine Arts in October 1975. The NASA Logotype shall be used as set forth in § 1221.111, the NASA Graphics Standards Manual, NASA Handbook 1430.2, and any related NASA directive or specification approved by the NASA Administrator and published subsequent hereto.

FIGURE C



The NASA Logotype Insignia

This logotype is the central element in NASA's visual communications system. Through consistent and repetitive use as a signature device and design element in all of NASA's visual communications, the logotype becomes a visual shorthand which identifies the Agency and symbolically embodies its activities, achievement and goals.

In the logotype, the letters N-A-S-A are reduced to their most simplified form. The strokes are all of one width, evoking the qualities of unity and technical precision. Elimination of cross-strokes in the two "A" letters imparts a vertical thrust to the logotype and lends it a quality of uniqueness and contemporary character.

Technical Description:

The NASA Logotype design is solid stroke letterforms, shown freestanding horizontally against a solid neutral background.

The Logotype sizes are based on (a) desired effect (b) relative size of object on which applied and (c) considerations of any design layout and reproduction. See NASA Graphics Standards Manual NHB 1430.2.

It is reproduced only photographically except that, for larger applications, the Logotype is reproduced using the grid shown in the Manual. Otherwise, the Logotype is never reproduced mechanically or by hand.

The preferred color of the NASA Logotype is NASA red (PMS 179), used only when a second color is available and appropriate. Against a white background, the Logotype may be shown in NASA red, black, or NASA warm gray. For background of other values, the Manual is to be consulted and followed.

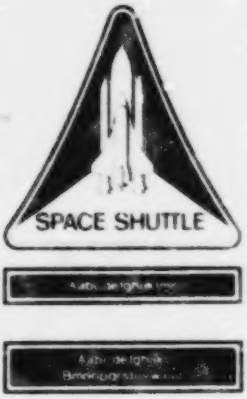
§ 1221.105 Establishment of NASA Program Badges.

A separate and unique badge may be designed and approved in connection with or in commemoration of a major NASA program. Each approved badge shall be officially identified by its title such as "Apollo," "Skylab," "Viking," "Space Transportation System (Space Shuttle)," or a major NASA anniversary. NASA Program Badges shall be used as set forth in § 1221.112 pursuant to approval as set forth in § 1221.115.

§ 1221.106 Establishment of the NASA Space Transportation System Program Badge and Add-on Bar.

The NASA Space Transportation System Program Badge (Space Shuttle) and Add-on Bar were established by the NASA Administrator on February 18, 1977. The Badge is a triangular stylized drawing of the Space Shuttle in launch configuration designed to provide overall program identity. The Add-on Bar(s) is a rectangular patch, with border, enclosing one or two lines of text positioned at the base of the badge. The Add-on Bar is designed to augment the badge and to provide subordinate Space Shuttle mission related identity such as project, payload, organization, text, experiment, system, or subsystem. The NASA Space Transportation System Program Badge and Add-on Bar(s) shall be used as set forth in § 1221.113, and shall conform to NASA standard design specifications.

Space Transportation System
Program Badge



Add-on Bar
[illegible]

Add-on Bar
[illegible]

DESCRIPTION

Space Transportation System
Program Badge

The official design for the Space Transportation System Program Badge [illegible] with a stylized [illegible] of the Space Shuttle [illegible] SPACE SHUTTLE [illegible] letters.

Add-on Bar

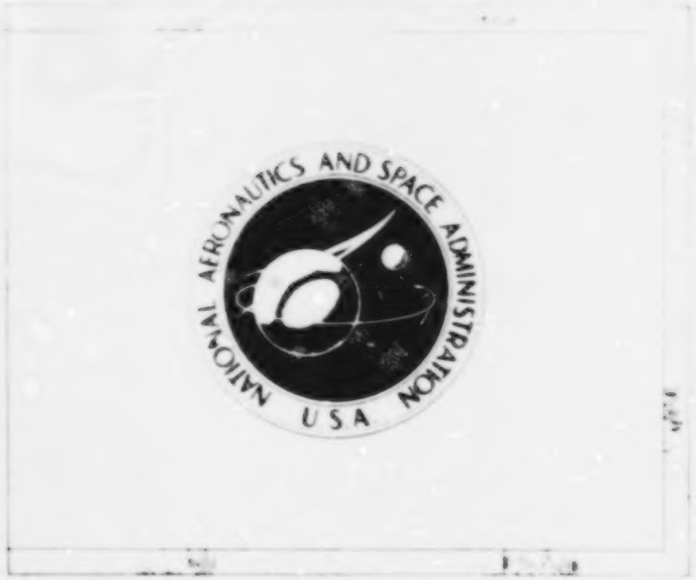
The official Add-on Bar [illegible] the NASA Space Transportation System Program Badge [illegible] Add-on Bar [illegible] with one or two lines of text [illegible] Add-on Bars [illegible] at the base of the badge.

DESIGN SPECIFICATIONS

Dimension and color specifications for the Badge and Add-on Bar are available from NASA [illegible] graphics coordination.

§ 1221.107 Establishment of the NASA Flag.

The NASA Flags for interior and exterior use were created by the NASA Administrator in January 1960. Complete design, size and color of the NASA interior and exterior flags for manufacturing purposes are detailed in U.S. Army QMC Drawing 5-1-269; Revision September 14, 1960. The NASA Flags shall be used as set forth in § 1221.114.


NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
U.S.A.

The NASA Flag

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

§ 1221.108 Establishment of the NASA Administrator's, Deputy Administrator's and Associate Deputy Administrator's Flags.

(a) Concurrently with the establishment of the NASA Flag in January 1960, the NASA Administrator also established NASA Flags to represent the NASA Administrator, Deputy Administrator and Associate Deputy Administrator. Each of these flags conforms to the basic design of the NASA Flag except that:

(1) The size of the flags is 3 feet x 4 feet;

(2) The Administrator's Flag has four stars;

(3) The Deputy Administrator's Flag has three stars; and

(4) The Associate Deputy Administrator's Flag has two stars.

(b) Flags representing these senior officials shall be used as set forth in § 1221.114.

§ 1221.109 Establishment of the NASA Astronaut Badges.

The NASA Astronaut Badge, commonly referred to as the "crew patch," is a separate and unique badge designed in connection with or in commemoration of a manned space flight mission for the particular astronauts involved. Each approved badge shall be identified by its title, such as "Apollo 17 Badge." Collectively, these badges will comprise the NASA Astronaut Badges. The NASA Astronaut Badges shall be used as set forth in § 1221.112 pursuant to approval as set forth in § 1221.115.

§ 1221.110 Use of the NASA Seal.

(a) The Executive Officer shall be responsible for custody of the NASA impression Seal and custody of NASA replica (plaques) seals. The NASA Seal is restricted to the following:

(1) NASA award certificates and medals.

(2) NASA awards for career service.

(3) Security credentials and employee identification cards.

(4) NASA Administrator's documents; the seal may be used on documents such as interagency or intergovernmental agreements and special reports to the President and Congress, and on other documents, at the discretion of the NASA Administrator.

(5) Plaques: the design of the NASA Seal may be incorporated in plaques for display in Agency auditoriums, presentation rooms, lobbies, offices of senior officials and on the fronts of buildings occupied by NASA.

(6) The NASA Flag, and the NASA Administrator's, Deputy Administrator's and Associate Deputy Administrator's Flags, which incorporate the design of the Seal.

(7) NASA prestige publications which represent the achievements or missions of NASA as a whole.

(8) Publications (or documents) involving participation by another government agency for which the other government agency has authorized the use of its seal.

(b) Use of the NASA Seal for any purpose other than as prescribed herein is prohibited, except that the Executive Officer may authorize, on a case-by-case basis, the use of the NASA Seal for purposes other than those prescribed when the Executive Officer deems such use to be appropriate.

§ 1221.111 Use of the NASA Logotype.

The NASA Logotype is authorized for use on the following:

(a) *NASA articles.* (1) NASA letterhead stationery.

(2) Films produced by or for NASA.

(3) Wearing apparel and personal property items used by NASA employees in performance of their duties.

(4) Required uniforms of contractor employees when performing public affairs duties, guard or fire protection duties and similar duties within NASA installations or at other assigned NASA duty stations, and on any required contractor-owned vehicles used exclusively in the performance of these duties, when authorized by NASA contracting officers.

(5) Spacecraft, aircraft, automobiles, trucks, and similar vehicles owned by, leased to, or contractor-furnished to NASA, or produced for NASA by contractors, but excluding NASA-owned vehicles used and operated by contractors for conduct of contractor business.

(6) Equipment and facilities owned by, leased to, or contractor-furnished to NASA, such as machinery, major tools, ground handling equipment, office and shop furnishings (if appropriate) and similar items of a permanent nature, including those produced for NASA by contractors.

(7) NASA pamphlets, brochures, manuals, handbooks, house organs, bulletins, general reports, posters, signs, charts and items of similar nature for general use, other than those covered in § 1221.110 (7) and (8).

(8) Briefcases or dispatch cases issued by NASA.

(9) Certificates (NASA Form 699A and 699B) covering authority for NASA and contractor security personnel to carry firearms.

(10) NASA occupied buildings when the use of the NASA Logotype is more appropriate than use of the NASA Seal.

(b) *Personal articles—NASA employees.* (1) Business calling cards of NASA employees may carry the imprint of the NASA Logotype.

(2) *Limited usage on automobiles.* If determined appropriate by the cognizant installation official, it is acceptable to place a NASA Logotype sticker on personal automobiles where such identification will facilitate entry or control of such vehicles at NASA installations or parking areas.

(3) Personal items used in connection with NASA employees' recreation association activities.

(4) Items for sale through NASA employees' non-appropriated fund activities subject to paragraph (c) of this section.

(c) *Miscellaneous articles.* (1) The manufacture and commercial sale of the NASA Logotype as a separate and distinct device in the form of an emblem, patch, insignia, badge, decal, vinylcal, cloth, metal or other material which would preclude NASA's control over its use or application is prohibited.

(2) Use of the NASA Uniform Patches, which incorporate the NASA Logotype, is authorized only as prescribed in the NASA Graphics Standards Manual, NASA Handbook 1430.2, for NASA personnel and NASA contractor personnel identification.

(3) No approval for use of the NASA Logotype will be authorized when its use can be construed as an endorsement by NASA of a product or service.

(4) Items bearing the NASA Logotype such as souvenirs, novelties, toys, models, clothing and similar items (including items for sale through the NASA employee's non-appropriated fund activities) may be manufactured and sold only after the NASA Logotype application has been submitted to, and approved by, the Director, Public Affairs Division, or designee, NASA Headquarters, Washington, DC 20546.

(d) Use of the NASA Logotype for any purpose other than as prescribed herein is prohibited, except that the Director, Public Affairs Division, may authorize on a case-by-case basis the use of the NASA Logotype for other purposes when the Director, Public Affairs Division, deems such use to be appropriate.

§ 1221.112 Use of the NASA Program and Astronaut Badges.

(a) Official NASA Program and Astronaut Badges will be restricted to the uses set forth herein and to such other uses as the Director, Public Affairs Division, may specifically approve.

(b) Specific approval is given for the following uses:

(1) Use of exact reproductions of a badge in the form of a patch made of cloth or other material, a decal or a gummed sticker, on articles of wearing apparel and personal property items; and

(2) Use of exact renderings of a badge on a coin, medal, plaque or other commemorative souvenirs.

(c) The manufacture and sale or free distribution of badges for the uses approved or that may be approved under paragraphs (a) and (b) of this section are authorized.

(d) Portrayal of an exact reproduction of a badge in conjunction with the advertising of any product or service will be approved on a case-by-case basis by the Director, Public Affairs Division.

(e) The manufacture, sale or use of any colorable imitation of the design of an official NASA Program or Astronaut Badge will not be approved.

§ 1221.113 Use of the NASA Space Transportation System Program Badge and Add-on Bar.

(a) The NASA Space Transportation System Program Badge (Space Shuttle) shall be used in the manner prescribed for NASA Program and Astronaut Badges, § 1221.112. It shall be used exclusively to identify the overall program and represent, identify and commemorate each Space Shuttle operational mission.

(b) The approved Add-on Bar(s) shall be used exclusively to provide subordinate mission related identity for NASA projects and payloads including NASA joint projects. Use of Add-on Bars for non-NASA projects and payloads, including domestic and/or international joint projects is encouraged.

(c) Add-on Bar proposals for both NASA and non-NASA projects and payloads shall be submitted to the Associate Administrator for Space Flight for review and approval and for compliance with NASA design specifications.

(d) Use of any device other than as prescribed herein is prohibited on NASA uniforms, publications, brochures, posters, charts, signs and items of a similar nature, to identify the Space Transportation System Program and related missions.

(e) Use of unique payload Program Badges for non-NASA missions are permitted only when the payload has been bought solely by another country other than the United States and when that country has total responsibility for that payload. (For example, in the case where Germany has bought a dedicated Spacelab mission and has total responsibility for the payload.) Unique payload Program Badge proposals shall be submitted to the Director, International Affairs Division, Director, Public Affairs Division, and the Associate Administrator for Space Flight, NASA Headquarters, for information and comment.

§ 1221.114 Use of the NASA Flags.

(a) The NASA Flag is authorized for use only as follows:

(1) On or in front of NASA installation buildings.

(2) At NASA ceremonies.

(3) At conferences (including display in NASA conference rooms).

(4) At governmental or public appearances of NASA executives.

(5) In private offices of senior officials.

(6) As otherwise authorized by the NASA Administrator or designee.

(7) The NASA Flag must be displayed with the United States Flag. When the United States Flag and the NASA Flag are displayed on a speaker's platform in an auditorium, the United States Flag must occupy the position of honor and be placed at the speaker's right as the speaker faces the audience, with the NASA Flag at the speaker's left.

(b) The NASA Administrator's, Deputy Administrator's and Associate Deputy Administrator's Flags shall be displayed with the United States Flag in the respective offices of these officials but may be temporarily removed for use at the discretion of the officials concerned.

§ 1221.115 Approval of new or change proposals.

(a) Any proposal to change or modify the emblematic devices set forth herein or to introduce a new emblematic device other than as prescribed herein requires the written approval of the NASA Administrator with prior approval and recommendation of the Director, Public Affairs Division.

(b) In addition to the written approval of the NASA Administrator, any proposal for a new or for a modification to the design of the NASA Insignia or NASA Logotype must also be submitted to the Commission of Fine Arts for its advice as to the merit of design. If approved in writing by the NASA Administrator and advice received from the Commission of Fine Arts, the NASA Insignia and the use of such NASA Insignia or NASA Logotype must be prescribed in this subpart and published in the FEDERAL REGISTER.

§ 1221.116 Violations.

(a) *NASA Seal.* Any person who uses the NASA Seal in a manner other than as authorized in this subpart shall be subject to the provisions of Title 18 U.S.C. 1017.

(b) *NASA Insignia, NASA Logotype and NASA Program and Astronaut Badges.* Any person who uses the NASA Insignia, NASA Logotype, NASA Program Badges or NASA Astronaut Badges in a manner other than as authorized in this subpart shall be subject to the provisions of Title 18 U.S.C. 701.

§ 1221.117 Compliance and enforcement.

In order to ensure adherence to the authorized uses of the NASA Seal, the NASA Insignia, the NASA Logotype, NASA Program and Astronaut Badges and the NASA Flags as provided herein, a report of each suspected violation of this Subpart (including the use of unauthorized NASA Insignias) or of questionable usages of the NASA Seal, the NASA Insignia, the NASA Logotype, NASA Program and Astronaut Badges or the NASA Flags shall be submitted to the Inspector General, NASA Headquarters, in accordance with NASA Management Instruction 9950.1, "The NASA Investigations Program".

Subpart 1221.2—The Congressional Space Medal of Honor

AUTHORITY: Pub. L. 91-76, September 29, 1969.

SOURCE: 43 FR 15624, Apr. 14, 1978, unless otherwise noted.

§ 1221.200 Scope.

This subpart establishes procedures for nominating an astronaut for the Congressional Space Medal of Honor.

§ 1221.201 Basis for award of the medal.

(a) The standard of award for the Congressional Space Medal of Honor is established by Pub. L. 91-76 (42 U.S.C. 2461) which provides that the President may award the Medal to any "astronaut who in the performance of his duties has distinguished himself by exceptionally meritorious efforts and contributions to the welfare of the Nation and of mankind."

(b) Only one Congressional Space Medal of Honor may be awarded to a person. However, for each succeeding act that would otherwise justify the award of the Medal, the President may award a suitable bar or other device.

(c) The Medal may be awarded to any person who is or has been designated to travel in space and who has distinguished himself or herself while undertaking duties in preparation for, execution of, or subsequent to, but in connection with, a space flight.

(d) The Medal may be awarded for actions occurring before the effective date of this Subpart 1221.2, and, when appropriate, posthumously.

§ 1221.202 Description of the medal.

The description of the Congressional Space Medal of Honor, which was designed by the Institute of Heraldry, U.S. Army, is set forth in Appendix A to this subpart. Each person awarded the Medal also shall receive a citation describing the basis for the award.

§ 1221.203 Nominations.

(a) Formal nominations for award of the Congressional Space Medal of Honor on behalf of NASA will be made by the Administrator to the President.

(b) Any person may recommend to the Administrator that an astronaut be nominated for award of the Medal. Such a recommendation must be in writing, and must describe in concise detail the events believed to warrant award of the Medal. The recommendation should, if appropriate, be accompanied by supporting documentation, such as eyewitness statements, extracts from official records, sketches, photographs, etc.

(c) All recommendations for nominations submitted to the Administrator or made on his own initiative will be referred to the NASA Incentive Awards Board for the purpose of investigating and making findings of fact and giving advice to the Administrator.

(d) Any recommendation involving an astronaut who is a member of the armed services on active duty or who is employed by another agency of the Federal Government but temporarily assigned or detailed to NASA shall also be transmitted to the Secretary of Defense or the head of the employing agency, as appropriate, for his or her recommendation.

(e) The Administrator will forward to the President his recommendation, and that of the astronaut's employing agency, as appropriate.

§ 1221.204 Proceedings of the NASA Incentive Awards Board.

The NASA Incentive Awards Board shall thoroughly consider the facts giving rise to a recommendation for nomination and shall prepare a report for the Administrator. The Board should, to the extent practicable, coordinate its efforts with those of the astronaut's employing agency, as appropriate. Its final report must take into account any pertinent information submitted by the employing agency.

APPENDIX A—CONGRESSIONAL SPACE MEDAL OF HONOR

OBVERSE

DESCRIPTION

A circular green enamel wreath of laurel surmounted by a five-pointed gold star (with vertical point downward) and issuing from between each point a gold flame, the star surmounted by a light blue enamel cloud bank with five lobes edged in gold bearing a five-pointed dark blue enamel star fimbriated gold and charged in center with a diamond; standing upon the wreath at top center a gold eagle with wings displayed.

SYMBOLISM

The laurel wreath, a symbol of great achievement, with the overlapping star points, simulates space vehicles moving to greater accomplishments through space. The flames signify the dynamic energy of the rocket era and the imagination of the men in the space program of the United States. The stylized glory cloud alludes to the glory in the coat of arms of the United States and to the high esteem of the award. The dark blue voided star symbolizes the vast mysteries of outer space while the brilliancy of the feat is represented by a diamond. The eagle with wings raised in the spirit of peace represents man's first landing on another planet.

REVERSE

DESCRIPTION

The reverse bears in center the inscription "CONGRESSIONAL" arranged in a semicircle above the inscription "SPACE MEDAL PRESENTED TO"; in base is space for the name of the recipient and the date all within an outer circle of fifty stars.

SUSPENSION RIBBON

DESCRIPTION

A ribbon $1\frac{3}{8}$ inches in width consisting of the following vertical stripes: gold $\frac{1}{16}$ inch, dark blue $\frac{1}{4}$ inch, light blue $\frac{9}{32}$ inch, white $\frac{1}{16}$ inch, red $\frac{1}{16}$ inch, white $\frac{1}{16}$ inch, light blue $\frac{9}{32}$ inch, dark blue $\frac{1}{4}$ inch, gold $\frac{1}{16}$ inch.

CABLE NOS. OF COLORS

Gold	65021 (old gold)
Dark Blue	70075 (independence blue)
Blue	65014 (light blue)
Red	65006 (scarlet)
White	65005

SYMBOLISM

The scarlet center line on the white band symbolizes the courage of the astronauts in the nation's manned space program and the fire power of rockets that carry the crew through the earth's atmosphere (light blue); the light blue is the same color as the chief of the shield of the coat of arms of the United States which appears on the President's flag. The dark blue symbolizes the hostile environment of space, the gold edge representing success and accomplishment. Red, white and blue are also the national colors of the United States.

MINIATURE

DESCRIPTION

A one-half size replica of the medal and suspension ribbon approximately $2\frac{5}{16}$ inches in overall length.

LAPEL EMBLEM

DESCRIPTION

A miniature of the obverse of the medal, $\frac{9}{16}$ inch in diameter, all gold with a diamond in center.

ROSETTE

DESCRIPTION

One-half inch in diameter in the colors of the ribbon.

PART 1240—INVENTIONS AND CONTRIBUTIONS

Subpart 1—Awards for Scientific and Technical Contributions

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Subpart 1—Awards for Scientific and Technical Contributions

AUTHORITY: 42 U.S.C. 2457 and 2458.

SOURCE: 32 FR 6272, Apr. 21, 1967, unless otherwise noted.

§ 1240.100 Scope.

This Subpart 1 prescribes procedures for the granting of monetary awards by the Administrator of the National Aeronautics and Space Administration for scientific and technical contributions having significant value in the conduct of aeronautical and space activities. This subpart applies to any scientific or technical contribution having significant value in the conduct of aeronautical and space activities for which an application for award has been made.

§ 1240.101 Criteria.

(a) Only those contributions to the Administration having significant value in the conduct of aeronautical and space activities will be recommended for award under this Subpart 1.

(b) In determining the terms and conditions of any award, the following criteria will be considered:

(1) The value of the contribution to the United States;

(2) The aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contributions by the United States; and

(4) Such other factors as the Administrator shall determine to be material.

§ 1240.102 Applications for awards.

(a) *Eligibility.* Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity.

(b) *Information required.* Applications for award should be addressed to the Inventions and Contributions Board (herein referred to as the Board), National Aeronautics and Space Administration, Washington, D.C., and shall contain:

(1) The name and address of the applicant, his relationship to the contributor if the contribution is made by one other than the applicant, and the names and addresses of any others having an interest in the contribution;

(2) A complete written description of the contribution, in the English language, accompanied by drawings, sketches, diagrams, or photographs illustrating the nature of the contribution and the technical and scientific principles upon which it is based, and any available test or performance data or observations of pertinent scientific phenomena;

(3) The date and manner of any previous submittal of the contribution to any other U.S. Government agency, and the name of such agency;

(4) The aggregate amount of any sums which have been expended by the applicant for the development of the contribution;

(5) The nature and extent of any known use of the contribution by the United States and by any agency of the U.S. Government;

(6) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States; and

(7) Identification of any United States and foreign patents applied for or issued relating to the contribution.

(c) *General.* (1) Each contribution should be made the subject of a separate application in order that each may be evaluated individually.

(2) Material constituting a possible hazard to safety or requiring unusual storage facilities should not be submitted, and will not be accepted. In those few cases where models or other intricate exhibits have been submitted pursuant to a request made by the Board the same will be returned to the applicant upon his written request.

(3) It is the policy of the Board to use or disclose information contained in applications for evaluation purposes only. Applications submitted with restrictive legends or statements differing from this policy shall be treated in accordance with the Board's policy.

§ 1240.103 Evaluation of contributions.

(a) The Board will evaluate the contribution on the basis of the material submitted by the applicant.

(b) With respect to each application, the Board will notify the applicant:

(1) In cases where it proposes to recommend to the Administrator the granting of an award, the amount and terms of the award, together with a statement of the reasons for such recommendation;

(2) In cases where it does not propose to recommend to the Administrator the granting of an award, a brief statement of the reasons for such decision; and

(3) That he may, within such period as the Board may set but in no event less than 30 days from notification, request either reconsideration or an oral hearing.

(c) If the applicant requests a hearing within the time set, the Board will set a place and date for such hearing and notify the applicant.

§ 1240.104 Hearing procedure.

Hearings held by the Board shall be in accordance with the following procedures:

(a) The applicant may be represented by attorneys or any other appropriately designated persons.

(b) Hearings will be open to the public unless the applicant requests that a closed hearing be held.

(c) Hearings may be held before the full membership of the Board or before any panel of Board members designated by the Chairman.

(d) Hearings shall be conducted in an informal manner with the objective of providing the applicant with a full opportunity to present evidence and arguments in support of the application. Evidence may be presented through means of such witnesses, exhibits, and visual aids as are arranged for by the applicant. While proceedings will be ex parte, members of the Board, and its counsel may address questions to witnesses called by the applicant, and the Board may, at its option, utilize the assistance of technical advisors or other experts.

(e) Subject to the provisions of § 1240.102(c)(2), the applicant will submit a copy of any exhibit or visual aid utilized unless otherwise directed by the Board. The Board may, at its discretion, arrange for a written transcript of the proceedings and a copy of such transcript will be made available by the recorder for purchase by the applicant.

(f) No funds are available to defray traveling expenses or any other cost to the applicant.

§ 1240.105 Recommendation to the Administrator.

Upon a determination by the Board that a contribution merits an award, the Board will recommend to the Administrator the terms and conditions of the award proposed. The recommendations of the Board to the Administrator will reflect the views of the majority of the Board members. Dissenting views may be transmitted with the majority opinion.

§ 1240.106 Release.

Under section 306(b)(1) of the National Aeronautics and Space Act of 1958, no award will be made to an applicant unless he submits a duly executed release, in a form specified by the Administrator, of all claims he may have to receive any compensation (other than the award recommended) from the U.S. Government for use of his contribution or any element thereof by or on behalf of the United States or any foreign government pursuant to any existing or future treaty or agreement with the United States.

Subpart 2—Awards for Reported Scientific and Technical Contributions—NASA and Contractor Employees

AUTHORITY: Sec. 306 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2458).

SOURCE: 43 FR 7309, Feb. 22, 1978, unless otherwise noted.

§ 1240.200 Scope.

This Subpart 2 outlines the present policy and revises the procedures for granting monetary awards to NASA and NASA contractor employees for scientific and technical contributions which are reported to NASA and are determined to have significant value in the conduct of aeronautical and space activities.

§ 1240.201 Applicability.

This Subpart 2 relates to any scientific or technical contribution which is a significant development that (a) advances the state of knowledge in space or aeronautical activities, or (b) is the subject of a United States patent application that has been authorized for filing, or (c) is the subject of a NASA tech brief that has been approved for publication; and to the actions to be taken to grant monetary awards for each of these contributions.

§ 1240.202 Policy.

Monetary awards are authorized and shall be made to employees of NASA and NASA contractors for a scientific or technical contribution, whether patentable or not, upon determination that the contribution is of significant value in the conduct of aeronautical and space activities.

§ 1240.203 General procedures.

(a) A NASA Headquarters office, a NASA field installation or a NASA contractor may submit to the Inventions and Contributions Board (hereafter referred to as "the Board") an application for an award to the originator or originators of any scientific or technical contribution conceived or developed during the performance of a NASA program or contract, and considered to be of value in advancing the state of knowledge in space or aeronautical activities, whether or not it is the subject of a NASA tech brief or of a U.S. patent application. The Board will recommend such a contribution for award when, upon evaluation of its scientific and technical merits, it is determined to warrant a minimum award of at least $100. Following determination of the specific amount of an award by the Board, its recommendation in that amount shall be submitted to the Administrator or his designee for approval. If two or more persons are responsible for the contribution, the Board will specify the amount to be awarded to each individual.

(b) When the Board receives written notice (NASA Form 1548) that the Assistant General Counsel for Patent Matters or the cognizant Patent Counsel at a NASA field installation has authorized the filing of a patent application for an invention made and reported by an employee of NASA or a NASA contractor, the Board shall recommend to the Administrator or his designee that an initial award of at least $100 be granted, and an award in at least that amount shall normally be granted to each inventor. If, upon subsequent evaluation, the significance of such an invention warrants an award greater than this established minimum, or later appreciates due to increased application or to the identification of new applications, the Board is authorized to recommend a supplemental award in an amount that shall be based on the evaluation or reevaluation of its technical and commercial merits.

(c) When the Board receives written notice (NASA Form 1546) that the Technology Utilization Officer at a NASA field installation has approved for publication a NASA tech brief based on an innovation made and reported by a NASA or NASA contractor employee, it shall recommend to the Administrator or his designee that an initial award of at least $50 be granted, and an award in at least that amount shall be granted to each originator of the innovation.

(d) When a tech brief has been approved for publication and the filing of a patent application has been authorized for the same contribution, the initial awards authorized in paragraphs (b) and (c) above shall be cumulative.

(e) Awards authorized in paragraphs (a), (b), and (c) of this section shall not be granted to a contributor who has previously received full compensation for, or on account of, the use of such a contribution by the United States.

(f) If a contribution, as first reported and evaluated, is judged not to merit either a minimum or a supplemental award as provided for in paragraphs (a), (b), or (c) of this section, but is later proved to be of significant value, it may be submitted for reevaluation. Responsible NASA and NASA contractor officials are encouraged to review periodically such reported contributions, and to resubmit them for reconsideration through the same channels as originally reported.

§ 1240.204 Presentation of awards.

(a) All monetary awards and accompanying acknowledgements to employees of NASA will be presented in a formal ceremony by the appropriate Official-in-Charge at the Headquarters Office, or by the Director of the cognizant field installation or his designee.

(b) All monetary awards and accompanying written acknowledgements to employees of NASA contractors will be forwarded to contractor officials for suitable presentation.

§ 1240.205 Financial accounting.

(a) The Award Check Receipt (NHQ DIV Form 622), which accompanies the transmittal of each group of award checks from the Board, will be dated and signed by the responsible Award Liaison Officer/Technology Utilization Officer and returned to the Inventions and Contributions Board without delay.

(b) Not later than December 10 of each year, the responsible field installation official shall submit a report certifying that all award checks, which were issued and received by the field installation during the year, have been delivered to the proper NASA and NASA contractor employees. In the case of those checks that have not been delivered by December 10, the certification report will be accompanied by all undelivered checks and a brief explanation of the reasons for the failure to make delivery. This annual certification report is essential in order to assure that income and withholding tax totals for all awardees are correct and complete at the close of each calendar year.

§ 1240.206 Delegation of authority.

(a) The Associate Administrator for Management Operations is delegated authority to execute grants of awards for significant scientific or technical contributions not exceeding $1000 per contribution, when in accordance with the recommendation of the Inventions and Contributions Board and in conformity with applicable law and regulations.

(b) The Chairman of the Inventions and Contributions Board is delegated authority to execute grants of initial awards upon the decision to file for a patent application, and upon the decision to publish a NASA tech brief.

(c) No redelegation is authorized except by virtue of succession.

(d) The Chairman of the Inventions and Contributions Board shall insure that feedback is provided to the Administrator through official channels to keep him fully and currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated in this section.

PART 1241—CONTRACT APPEALS

Subpart 1241.1—General Procedures

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Subpart 1241.1—General Procedures

AUTHORITY: 42 U.S.C. 2473(b)(1).

SOURCE: 42 FR 42679, Aug. 24, 1977, unless otherwise noted.

§ 1241.10 Scope.

This subpart prescribed the procedures for the adjudication of appeals before the NASA Board of Contract Appeals (hereinafter referred to as "the Board") arising from NASA contracts.

PREFACE TO THE RULES

§ 1241.11 Authority and jurisdiction of the Board.

(a) The Board, constituted under the provisions of Subpart 1209.1 of this chapter, is authorized to hear, consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Administrator or his duly authorized representative or board. In addition, the Board may perform other quasi-judicial duties as assigned by the Administrator. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator.

(b) Under § 1209.102(b) of this chapter, the Board is granted the authority to issue its rules of procedure.

§ 1241.12 Location and organization of the Board.

(a) The Board is located in Washington, D.C., and its mailing address is The Board of Contract Appeals, National Aeronautics and Space Administration, Washington, D.C. 20546.

(b) The Board consists of a Chairman and two other members, all of whom shall be attorneys at law duly licensed by any state or the District of Columbia, and who have significant experience in Government procurement law. In general, the appeals are assigned to a panel of at least two members of the Board. If a panel of two members is unable to agree upon a decision, the Chairman may assign a third member to consider the appeal. The Chairman is designated as Chief Administrative Judge and the other Board members are designated as Administrative Judges.

§ 1241.13 Decisions on questions of law.

When an appeal is taken pursuant to a Disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

§ 1241.14 Board of Contract Appeals procedure.

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation, and extensions.* (1) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be mde in writing and stating good cause therefor.

PRELIMINARY PROCEDURES

§ 1241.101 Appeals, how taken.

Notice of an appeal must be in writing and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

§ 1241.102 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended and should identify the contract (by number), and the final decision of the contracting officer from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the apppeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 1241.106 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 1241.103 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

§ 1241.104 Preparation, contents, organization, forwarding and status of appeal file.

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time specified above, the contracting officer shall furnish the appellent a copy of each document he transmits to the Board, except those stated in § 1241.104(a)(2), as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in § 1241.104(d).

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of the appeal file.* Documents in the appeal file may be originals or legible fascimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 1241.113 and 1241.120.

§ 1241.105 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 1241.106 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 1241.107 Amendments of pleadings or record.

The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to

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amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 1241.104, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the § 1241.104 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 1241.108 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of § 1241.106(b), appellant shall advise whether he desires a hearing as prescribed in §§ 1241.117 through 1241.125, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in § 1241.111. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in § 1241.112.

§ 1241.109 Prehearing briefs.

Based on an examination of the documentation described in § 1241.104, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 1241.108. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 1241.110 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 1241.111, or heard pursuant to § 1241.117 through § 1241.125, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before an Administrative Judge for a conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the appeal.

(b) *Conference record.* The results of the conference shall be reduced to writing by the Board member within 5 calendar days after the close of the conference. Copies shall be duly served on the parties who may, within 10 calendar days from receipt of the written record, file objection, comment, request for correction, or other motion pertaining to that record of prehearing conference. The record of prehearing conference, together with any objection, comment, request for correction, or other motion made by the parties shall become a part of the Board record.

§ 1241.111 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the board, as settled pursuant to § 1241.113. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 1241.123.

§ 1241.112 Optional accelerated procedure.

(a) In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision.

(c) Except as herein modified, these rules otherwise apply in all respects.

§ 1241.113 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 1241.104 and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit addditional evidence on any matter relevant to the appeal.

§ 1241.114 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 1241.115 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

§ 1241.116 Service of papers.

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers, and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

§ 1241.117 Where and when held.

Hearings will ordinarily be held in the Washington, D.C., area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

§ 1241.118 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

§ 1241.119 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 1241.111.

§ 1241.120 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in amy case require evidence in addition to that offered by the parties.

§ 1241.121 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member shall otherwise order. If the testimony of a witness is not given under oath of affirmation, the Board shall warn the witness that his statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 1241.122 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 1241.123 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

§ 1241.124 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract with the reporter.

§ 1241.125 Withdrawal of exhibits.

After a decision has become final the Board may, upon request, and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the board on its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 1241.126 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 1241.127 The respondent.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and the government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the apppeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

DECISIONS

§ 1241.128 Decisions.

Decisions of the Board will be made in writing and copies thereof will be forwarded simultaneously to both parties. Decisions of the Board will be made solely upon the record, as described in § 1241.113. The rules of the Board, all final orders and decisions, and other records of, or before, the Board shall be available for inspection at its offices to the extent permitted by, and subject to the exemptions of, 5 U.S.C. 552.

MOTION FOR RECONSIDERATION

§ 1241.129 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DISMISSALS

§ 1241.130 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 1241.131 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

§ 1241.132 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, of the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

§ 1241.133 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

Subpart 1241.2—General Procedures

AUTHORITY: 42 U.S.C. 2473.

SOURCE: 45 FR 23407, Apr. 7, 1980, unless otherwise noted.

§ 1241.196 Scope.

Subpart 1241.2 prescribes the procedures for the adjudication of appeals before the NASA Board of Contract Appeals (hereinafter referred to as the "Board") which are filed pursuant to the Contract Disputes Act of 1978, Pub. L. 95-563, or, where pursuant to the Act, an appellant elects the option to proceed in accordance with the Act.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

PREFACE TO THE RULES

§ 1241.197 Jurisdiction of the Board.

The NASA Board of Contract Appeals (referred to herein as the "Board") shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Pub. L. 95-563, 41 U.S.C. 601-613) relating to contracts made by (a) the National Aeronautics and Space Administration, or (b) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal. The Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims. In addition, the Board may perform other duties as assigned by the Administrator which are not inconsistent with its statutory duties.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

§ 1241.198 Location and organization of the Board.

(a) The Board is located in Washington, D.C., and its mailing address is the Board of Contract Appeals, National Aeronautics and Space Administration, Washington, D.C. 20546. The telephone number of the Board is (202) 755-3481.

(b) The Board consists of a Chairperson, Vice Chairperson, and other members, all of whom are attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. Normally, the appeals are assigned to a panel of at least two members of the Board. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal. The Chairperson is designated as Chief Administrative Judge and the other Board members are designated as Administrative Judges.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

§ 1241.199 General guidelines.

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation and extensions.* (1) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be made in writing and stating good cause therefore.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

§ 1241.200 Ex parte communications.

No members of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

[45 FR 23407, Apr. 7, 1980; 45 FR 35321, May 27, 1980]

PRELIMINARY PROCEDURES

§ 1241.201 Appeals, how taken.

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under paragraphs (b) or (c) of this section, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

§ 1241.202 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in § 1241.206 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 1241.203 Docketing of appeals.

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writting shall be given to the appellant with a copy of these rules, and to the contracting officer.

§ 1241.204 Preparation, content, organization, forwarding, and status of appeal file.

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in paragraph (a)(2) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* Upon request by either party, the Board may waive the requirements to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with §§ 1241.213 and 1241.220.

(f) Notwithstanding the foregoing, the filing of the § 1241.204 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

§ 1241.205 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

§ 1241.206 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government.* Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 1241.207 Amendments of pleadings or record.

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

§ 1241.208 Hearing election.

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in §§ 1241.217 through 1241.225, or whether it elects to submit its case on the record without a hearing, as prescribed in § 1241.211.

§ 1241.209 Prehearing briefs.

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issue are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 1241.208. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 1241.210 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to § 1241.211 or heard pursuant to §§ 1241.217 through 1241.225, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge and this writing shall thereafter constitute a part of the record.

§ 1241.211 Submission without a hearing.

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to § 1241.213. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 1241.223.

§ 1241.212 Optional small claims (expedited) and accelerated procedures.

These procedures are available solely at the election of the appellant.

§ 1241.212-1 Election to utilize small claims (expedited) and accelerated procedures.

(a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in § 1241.212-2 of this rule. An appellant may elect the accelerated procedure of paragraph (b) of this section rather than the small claims (expedited) procedure for any appeal eligible for the small claims (expedited) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in § 1241.212-3 of this rule.

(c) The appellant's election of either the small claims (expedited) procedure or the accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) In deciding whether the small claims (expedited) procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute by adding to the amount claimed by the appellant against the Government the amount claimed by the Government against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

§ 1241.212-2 The small claims (expedited) procedure.

(a) In cases proceeding under the small claims (expedited) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the small claims (expedited) procedure, if not previously accomplished under § 1241.204, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under § 1241.204 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(i) Identify and simplify the issues;

(ii) establish a simplified procedure appropriate to the particular appeal involved;

(iii) determine whether either party wants a hearing, and if so, fix a time and place therefor;

(iv) require the Government to furnish all the additional documents relevant to the appeal, and

(v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the small claims (expedited) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under § 1241.229.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

§ 1241.212-3 The accelerated procedure.

(a) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including § 1241.204, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of the chair or a vice chair or other designated administrative judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under § 1241.229.

§ 1241.212-4 Motions for reconsideration in § 1241.212 cases.

Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

§ 1241.213 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under §§ 1241.204 and 1241.212 to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 1241.214 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of § 1241.221.

§ 1241.215 Interrogatories to parties, admission of facts, and production and inspection of documents.

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after serivce. Any discovery engaged in under this rule shall be subject to the provisions of § 1241.214 with respect to general policy and protective orders, and of § 1241.233 with respect to sanctions.

§ 1241.216 Service of papers other than subpoenas.

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in § 1241.221.

HEARINGS

§ 1241.217 Where and when held.

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Boad. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, § 1241.212 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

§ 1241.218 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

§ 1241.219 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 1241.211.

§ 1241.220 Hearings: nature, examination of witnesses.

(a) *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, U.S. Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 1241.221 Subpoenas.

(a) *General.* Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chair may issue a subpoena requiring:

(1) *Testimony as a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a) (1) or (2) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought. In its discretion the Board may honor requests for subpoenas not made within these time limitations.

BEST COPY AVAILABLE

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made *within* 10 days after service but in any event not later than the time specified in the supoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781 to 1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 1241.222 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 1241.223 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge at the conclusion of the hearing.

§ 1241.224 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under § 1241.212-2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract with the reporter.

§ 1241.225 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 1241.226 The appellant.

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 1241.227 The government.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

DECISIONS

§ 1241.228 Decisions.

Decisions of the Board will be made in writing and copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in § 1241.213.

MOTION FOR RECONSIDERATION

§ 1241.229 Motion for reconsideration.

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

SUSPENSIONS; DISMISSALS AND DEFAULTS; REMANDS

§ 1241.230 Suspensions; dismissal without prejudice.

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 1241.231 Dismissal or default for failure to prosecute or defend.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to § 1241.233. If good cause is not shown, the Board may take appropriate action.

§ 1241.232 Remand from court.

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

SANCTIONS

§ 1241.233 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE

§ 1241.234 Effective date.

These rules shall apply (a) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (b) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

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Subpart 1—Patent Waiver Regulations

AUTHORITY: 42 U.S.C. 2457.

SOURCE: 46 FR 37023, July 27, 1981, unless otherwise noted.

§ 1245.100 Scope.

This subpart prescribes regulations for the waiver of rights of the Government of the United States to inventions made under NASA contract in conformity with section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

§ 1245.101 Applicability.

The provisions of this subpart apply to all inventions made or which may be made under conditions enabling the Administrator to determine that the rights therein reside in the Government of the United States under section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)). The provisions do not apply to inventions made under any contract, grant, or cooperative agreement with a non-profit organization or a small business firm that are afforded the disposition of rights as provided in 35 U.S.C. 200-204, 94 Stat. 3019-3023, except as provided in § 1245.118.

§ 1245.102 Definitions and terms.

As used in this subpart:

(a) "Contract" means any actual or proposed contract, agreement, understanding, or other arrangement with the National Aeronautics and Space Administration (NASA) or another Government agency on NASA's behalf, including any assignment, substitution of parties or subcontract executed or entered into thereunder, and including NASA grants awarded under the authority of 42 U.S.C. 1891-1893.

(b) "Contractor" means the party who has undertaken to perform work under a contract or subcontract.

(c) "Invention" includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(d) "Made," when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(e)"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(f) "Board" means the NASA Inventions and Contributions Board established by the Administrator of NASA within the Administration under section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)).

(g)"Chairperson" means Chairperson of the NASA Inventions and Contributions Board.

(h) "Petitioner" means a contractor or prospective contractor who requests that the Administrator waive rights in an invention of class of inventions made or which may be made under a NASA contract. In the case of an identified invention, the petitioner may be the inventor(s).

(i) "Government agency" includes any executive department, independent commission, board, office agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(j) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(k) "Administrator" means the Administrator of the National Aeronautics and Space Administration or the Administrator's duly authorized representative.

§ 1245.103 Policy.

(a) In implementing the provisions of section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)), and in determining when the interests of the United States would be served by waiver of all or any part of the rights of the United States in inventions made in the performance of work under NASA contracts, the Administrator will be guided by the objectives set forth in the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 to 2477) and by the basic policy of the revised Presidential Memorandum and Statement of Government Patent Policy issued August 23, 1971 (36 FR 16887 to 16892). The President's statement of Government Patent Policy regarding the disposition of rights has been authorized by Congress (35 U.S.C. 210(c); 94 Stat. 3027). Among the most important goals are to provide incentives to foster inventiveness and encourage reporting of inventions made under NASA contracts, to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of this new technology for commercial purposes and the public benefit. In applying this regulation both the need for incentives to draw forth private initiatives and the need to promote healthy competition in industry must be weighed.

(b) Several different situations when waiver of all or any part of the rights of the United States may be requested are prescribed in §§ 1245.104 to 1245.106. Under § 1245.104, advance waiver of rights to any or all of the inventions which may be made under a contract may be requested prior to the execution of the contract, or within 30 days after execution of the contract. Waiver of rights to an identified invention made and reported under a contract may be requested under any of these provisions even though a request under a different provision was not made, or if made, was not granted. Waiver of foreign rights under § 1245.106 may be requested concurrently with domestic rights or independently.

(c) With respect to inventions which may be or are made or conceived in the course of or under contracts for research, development, or demonstration work awarded by NASA on behalf of the Department of Energy (DOE) or in support of a DOE program, on a reimbursable basis pursuant to agreement between DOE and NASA, the waiver policy, regulations, and procedures of DOE will be applied. (See § 1245.110(e), § 1245.111(b).)

§ 1245.104 Advance waivers.

(a) The provisions of this section apply to petitions for waiver of domestic rights to any or all of the inventions which may be made under a contract.

(b) The NASA Inventions and Contributions Board normally will recommend grant of a request for advance waiver of domestic rights submitted prior to execution of contract or within 30 days after execution of the contract unless the Board finds that the interests of the United States will be better served by restricting or eliminating rights of the contractor in one or more of the following situations:

(1) Where the contract is for the operation of a Government-owned research or production facility;

(2) When a determination has been made by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counter-intelligence activities that the restriction or elimination of the right to retain title to any inventions made in the performance of work under the contract is necessary to protect the security of such activities; or

(3) Where the Board finds that exceptional circumstances exist, such that restriction or elimination of the right to retain title will better promote one or more of the following objectives:

(i) Promoting the utilization of inventions arising from federally supported research and development;

(ii) Encouraging maximum participation of industry in federally-supported research and development efforts;

(iii) Ensuring that inventions are used in a manner to promote free competition and enterprise;

(iv) Promoting the commercialization and public availability of inventions made in the United States by United States industry and labor; and

(v) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c) An advance waiver, when granted, will apply only to inventions reported to NASA under the applicable terms of the contract and a designation made within 6 months of the time of reporting (or a reasonable time thereafter permitted for good cause shown) that the Contractor elects title to the invention and intends to file or has filed a U.S. patent application. Such election will be made by notification in writing to the patent representative designated in the contract.

(d) [Reserved]

(e) When a petition for waiver is submitted under paragraph (a) of this section, prior to contract execution, it will be processed expeditiously so that a decision on the petition may be reached prior to execution of the contract. However, if there is insufficient time or insufficient information is presented, or for other reasons which do not permit a recommendation to be made without unduly delaying execution of the contract, the Board will inform the contracting officer that no recommendation has been made and the reason therefor. The contracting officer will then notify the petitioner of the Board's action.

(f) After notification by the contracting officer under paragraph (e) of this section; the petitioner may, upon its execution of the contract, or within 30 days, request the Board to reconsider the matter under paragraph (b) of this section either on the record or with any additional statements submitted in subpart of the original petition.

(g) A waiver granted pursuant to a petition submitted under this section shall apply only to those inventions reported under the terms of the applicable contract and which are designated at the time of reporting as being an invention on which the petitioner intends to file or has filed a U.S. patent application. The waiver shall extend to the claimed invention of any division or continuation of the patent application filed on the reported invention provided the claims of the subsequent application do not substantially change the scope of the reported invention.

(h) A waiver granted pursuant to a petition submitted under this section shall extend to any contract changes, modifications, or supplemental agreements, so long as the purpose of the contract or the scope of work to be performed is not substantially changed.

[46 FR 37023, July 27, 1981, as amended at 48 FR 22132, May 5, 1983]

§ 1245.105 Waiver after reporting inventions.

(a)(1) The provisions of this section apply to petitions for waiver of domestic rights to identified inventions which have been reported to NASA and to which a waiver of rights has not been granted pursuant to § 1245.104. A petition for waiver under this section should be filed promptly after the reporting of the invention to NASA, and must be submitted prior to the filing by NASA of a U.S. patent application claiming the reported invention.

(2) A waiver granted under this section shall extend to the claimed invention of any division or continuation of that patent application filed on the reported invention provided the claims of the subsequent application do not substantially change the scope of the reported invention.

(b) When an individual identified invention has been reported to NASA under the applicable terms of the contract and waiver of rights has not been granted under § 1245.104, the Board normally will recommend grant of a request for waiver of domestic rights to such invention if the request is received within 6 months of reporting (or such longer period that the Board may permit for good cause shown), unless the Board finds that exceptional circumstances exist such that restriction or elimination of the right to retain title will better promote one or more of the objectives set forth in § 1245.104(b)(3)(i)—(iv).

[46 FR 37023, July 27, 1981, as amended at 48 FR 22132, May 5, 1983]

§ 1245.106 Waiver of foreign rights.

(a) The Board will consider the waiver of domestic and foreign rights concurrently when so requested by the petitioner in accordance with § 1245.110(d). Where the Board makes the findings necessary to support a waiver of domestic rights, the petitioner will normally be granted the right to secure patents in any country in which it elects to file provided that the grant of such right is consistent with the economic interests of the United States. The Board may also recommend the grant of only foreign rights, in accordance with the guidelines of paragraph (b) of this section, when the interests of the United States will best be served.

(b) The Board will also consider a separate request for the waiver of the right to secure a patent in any country in which the petitioner elects to file as to an identified invention when requested by the petitioner in accordance with § 1245.110(d). Waiver of such foreign rights will normally be granted in countries in which the Administrator does not desire to file an application for patent provided that the grant of such rights is consistent with the economic interests of the United States.

(c) The petition for foreign rights must designate those countries in which the petitioner elects to file and secure patents. The Board will normally grant the right to secure patents in the designated countries provided the criteria set forth in paragraphs (a) and (b) of this section are satisfied. If, subsequent to the granting of the petition for foreign rights, the contractor requests and designates additional countries in which it wishes to secure patents, the Chairperson may grant such request, in whole or in part, without further action by the Board.

§ 1245.107 Reservations.

(a) For any particular invention, each waiver of domestic or foreign rights granted shall be subject to the reservation of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the invention throughout the world by or on behalf of the U.S. Government or any agency thereof, any foreign government under any existing or future treaty or agreement with the United States, or States and/or domestic municipal governments unless the Administrator determines, based upon a recommendation of the Board, that it would not be in the public interest to acquire the license for States and/or domestic municipal governments.

(b) For any particular invention, each waiver of domestic rights granted shall be subject to the reservation by the Administrator of the right to require the granting of a nonexclusive or exclusive license for the practice of the invention to any responsible applicant on terms that are reasonable under the circumstances:

(1) Unless the waiver recipient, its licensees, or assigns have taken effective steps within 3 years after a U.S. patent issues on the invention to bring the invention to the point of practical application and thereafter continue to work the invention and make its benefits reasonably accessible to the public; or

(2) Unless within 3 years after a U.S. patent issues on the invention, the waiver recipient, its licensee, or its assigns have made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances; or

(3) To the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill health, safety, or welfare needs, or for other public purposes stipulated in the contract.

(c) For any particular invention, each waiver granted for domestic or foreign rights shall be subject to the reservation by the Administrator of the right to require refund of any amounts received as royalty charges on the waived invention in procurements for or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the waived invention.

(d) For any particular invention, each waiver granted for domestic or foreign rights shall be subject to any other reservations called for by the Administrator on the grant of the petition.

(e) The waiver recipient shall be given an opportunity to show cause before the Board why it should not be required to grant a license under paragraph (b) of this section or why it should retain the principal or exclusive rights as provided by waiver for a further period of time.

(f) For any particular invention, each waiver of rights granted will be subject to the additional reservation by the Administrator of the right to require the granting of a nonexclusive or exclusive license for the practice of the invention to any responsible applicant on terms that are reasonable under the circumstances if either the waiver recipient grants to any person the exclusive right to use or sell the invention in the United States without obtaining agreement from such person that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, or a licensee of the exclusive right to use or sell the invention in the United States is in breach of such agreement. In individual cases the requirement for such agreement may be waived by the Board upon a showing by the waiver recipient that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would likely be manufactured in the United States or that under the circumstances domestic manufacture is not commercially feasible.

[46 FR 37023, July 27, 1981, as amended at 48 FR 22133, May 5, 1983]

§ 1245.108 License to contractor.

(a) Each contractor reporting an invention is granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on the invention and in any resulting patent in which the Government acquires title. The license extends to the contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right is transferable only with the approval of the Administrator except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(b) The contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve the earliest practical application of the invention under an exclusive or partially exclusive license to be granted under the NASA Patent Licensing Regulations (14 CFR 1245.2). This license shall not be revoked in that field of use and/or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the contractor, its licensees, or its domestic affiliates have failed to achieve practical application in that foreign country.

(c) Before revocation or modification of the license, the contractor shall be allowed 30 days (or any other time as may be allowed by the Administrator for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor shall have the right to appeal, under the NASA Patent Licensing Regulations (14 CFR 1245.2), any decision concerning the revocation or modification of its license.

§ 1245.109 Revocation and voidability of waivers.

(a) If the waiver recipient fails to file a domestic or foreign patent application on any waived invention within the precribed time periods, or decides not to continue prosecution of any such patent application, or to pay any of the required maintenance fees, or for any reason decides not to retain title to any patent application or any patent issued thereon, the waiver recipient shall notify the Chairperson and shall, upon request, convey to NASA the entire right, title, and interest in the invention, and to any corresponding patent application or patent. The conveyance shall be made by delivering to the Chairperson duly executed instruments (prepared by the Government) and, if applicable, any other papers as are deemed necessary to vest in the Government the entire right, title, and interest in the invention and any corresponding patent application. In addition, any waiver of rights (domestic or foreign) shall be voidable as set forth in paragraphs (b) through (d) of this section.

(b) For any particular invention, each waiver of domestic rights shall be voidable at the option of the Administrator unless:

(1) Within 6 months from the date of reporting an invention under a contract subject to a waiver granted under § 1245.104, or 6 months from the date of the granting by the Administrator of a waiver pursuant to § 1245.105, or longer periods as may be approved by NASA for good cause shown, the waiver recipient causes an application for U.S. Letters Patent to be filed disclosing and claiming the invention and shall include as the first paragraph of the specification following the abstract, the statement:

> The invention described herein was made in the performance of work under NASA Contract No. ——— and is subject to the provisions of Section 305 of the National Aeronautics and Space Act of 1958 (72 Stat. 435; 42 U.S.C. 2457).

(2) Within 2 months after the filing or within 2 months after the date of the grant of waiver if the patent application previously has been filed, the waiver recipient delivers to the Chairperson a copy of the application including the filing date and serial number.

(3) Within 6 months after the filing, or within 6 months after the grant of waiver if a patent application has been previously filed, the waiver recipient delivers to the Chairperson a duly executed and approved instrument prepared by the Government, fully confirmatory of all the rights to which the Government is entitled, and provide the Administrator an irrevocable power to inspect and make copies of the patent application.

(4) The waiver recipient furnishes to the Chairperson a copy of the patent within 2 months after the patent is issued on such application.

(5) The waiver recipient notifies the Chairperson not less than 30 days before the expiration of the initial response period for any action required by the Patent and Trademark Office of any decision not to continue prosecution of the application and delivers to the Chairperson executed instruments granting the Government a power of attorney to prosecute the application.

(6) The waiver recipient grants any license which the Administrator may require under § 1245.107.

(7) The waiver recipient files a utilization report with the Board, upon NASA's written request, not more often than annually. The report shall set forth in detail the steps taken by the waiver recipient or its transferee regarding the progress, development, application, and commercial use being made and that is intended to be made of the waived invention. No such utilization report need be submitted after the term of the patent has expired.

(8) The waiver recipient notifies the Chairperson in not less than 60 days prior to any transfer of prinicipal rights in the invention to any party, and submits a statement of the transferee's development and commercialization plans to bring the invention to practical application. The statement should accompany the notification or it may be submitted in not less than 30 days prior to the transfer of rights. The statement must show to the Board's satisfaction that the property rights in the transferee will increase the likelihood that the benefits of the invention would be made readily available to the public at an early date.

(9) The waiver recipient complies with any other terms and conditions called for by the Administrator with respect to the grant of the petition.

(c) For any particular invention, each waiver granted shall be voidable at the option of the Administrator if a patent claiming such invention is held, in a final determination, to have been used in violation of the antitrust laws in any suit, action, or proceeding brought before a properly constituted authority authorized to hear such matter.

(d) For any particular invention, waiver of foreign rights as to any foreign country shall be voidable at the option of the Administrator unless:

(1) A patent application is filed in the country within 8 months from the date a corresponding U.S. application is filed, or 6 months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications where the filing has been prohibited for security reasons, or longer periods as may be approved by the Administrator;

(2) The waiver recipient furnishes to the Chairperson the identifying serial number and filing date of each foreign patent application filed promptly upon receipt thereof; and, upon request, a copy of an English version of the foreign application without additional compensation and a copy of the foreign patents;

(3) The waiver recipient delivers to the Chairperson a duly executed and approved instrument prepared by the Government, fully confirmatory of all the rights herein reserved by the Government; and

(4) The waiver recipient, in the event it elects not to continue prosecution of any foreign application filed on the invention or if it intends to abandon a foreign patent by the nonpayment of a maintenance tax, notifies the Chairperson within sufficient time to allow assumption of prosecution by the Government, or payment of the maintenance tax, respectively, and delivers to the Chairperson the executed instruments as are necessary to vest in the Administrator title thereto, including an instrument of assignment.

§ 1245.110 Content of petitions.

(a) Each request for waiver of domestic or foreign rights under § 1245.104, § 1245.105, or § 1245.106 shall be by petition to the Administrator and shall include an identification of the petitioner, its place of business and address, and if the petitioner is represented by counsel, the name, address, and telephone number of the counsel; the nature and extent of the rights desired and a citation to the section under which the petition is submitted; the signature of the petitioner or its authorized representative, and date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested, including a clear indication of whether the request is for an advance waiver or waiver of rights for an individual identified invention; information identifying the proposed contract or resulting contract, if any; a copy of the invention disclosure if the request is for an individual, identified invention; and the name, address and telephone number of the party with whom the Board is to communicate when the request is acted upon. Requests for advance waiver should, preferably, be included with the proposal, but in any event in advance of negotiations.

(b)—(c) [Reserved]

(d) *Petitions for waiver of foreign rights under § 1245.106.* A petition for waiver of foreign rights may accompany any part of a petition for waiver of domestic rights under either § 1245.104 or § 1245.105, or a petition for foreign rights may be submitted independently of any request for domestic rights under § 1245.106(b). In addition to the information specified in paragraph (a) of this section, petition for waiver of foreign rights shall include, where feasible, a denomination of the foreign countries in which petitioner elects to secure or intends to file patent applications, and its plans and intentions to practice and/or license the invention in these countries.

(e) *Petitions for waiver under § 1245.103(c).* Contents of the petition shall normally be as prescribed by the other Government agency, and petitioner may use any forms provided by the agency.

[46 FR 37023, July 27, 1981, as amended at 48 FR 22133, May 5, 1983]

§ 1245.111 Submission of petitions.

(a) During this interim period, petitions (requests) for advance waiver under § 1245.104, prior to contract execution, must be submitted to the contracting officer. Any petition submitted by those organizations selected for negotiation of a contract will be processed and forwarded to the Board for consideration. All other petitions will be submitted to the patent representative designated in the contract for processing prior to forwarding to the Board.

(b) Any waiver petitions submitted under § 1245.103(c) should be forwarded to the appropriate NASA field installation patent counsel for transmittal to DOE for processing.

(c) Any request for waiver by a nonprofit organization or small business firm under § 1245.118 shall be submitted to the Chairperson, Inventions and Contributions Board.

[46 FR 37023, July 27, 1981, as amended at 48 FR 22133, May 5, 1983]

§ 1245.112 Notice of proposed Board action and reconsideration.

(a) *Notice.* Except as provided by § 1245.104(e) the Board will notify the petitioner, through the contracting officer for petitions for advance waiver prior to contract execution, and directly for all others:

(1) Whether it proposes to recommend to the Administrator that the petition be:

(i) Granted in the extent requested;

(ii) Granted in an extent different from that requested; or

(iii) Denied.

(2) Of the reasons for any recommended action adverse to or different from the waiver of rights requested by the petitioner.

(b) *Request for reconsideration and statements required.* (1) If, under paragraph (a) of this section, the Board notifies the petitioner that the Board proposes to recommend action adverse to or different from the waiver requested, the petitioner may, within the period as the Board may set, but not less than 15 days from the notification, request reconsideration by the Board.

(2) If reconsideration has been requested within the prescribed time, the petitioner shall, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file statement setting forth the points, authorities, arguments, and any additional material on which it relies.

(3) Upon filing of the reconsideration statement by the petitioner, the petition will be assigned for reconsideration by the Board upon the contents of the petition, the record, and the reconsideration statement submitted by the petitioner.

(4) The Board, after its reconsideration, will promptly notify the petitioner of its proposed recommendation to the Administrator. If the Board's proposed action is adverse to, or different from, the waiver requested, the petitioner may request an oral hearing within the time as the Board has set.

§ 1245.113 Hearing procedure.

(a) If the petitioner requests an oral hearing within the time set, under § 1245.112(b)(4), the Board shall set the time and place for the hearing and shall notify the petitioner.

(b) Oral hearings held by the Board shall be open to the public and shall be held in accordance with the following procedures:

(1) Oral hearings shall be conducted in an informal manner, with the objective of providing the petitioner with a full opportunity to present facts and arguments in support of the petition. Evidence may be presented through means of witnesses, exhibits, and visual aids as are arranged for by the petitioner. Petitioner may be represented by any person including its attorney. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the petitioner, and the Board may, at its option, enlist the aid of technical advisors or expert witnesses. Any person present at the hearing may make a statement for the record.

(2) A transcript or equivalent record of the proceeding shall be arranged for by the Board. The petitioner shall submit for the record a copy of any exhibit or visual aid utilized during the hearing.

§ 1245.114 Findings and recommendations of the Board.

(a) *Findings of the Board.* The Board shall consider the petition, the NASA contract, if relevent, the goals cited in § 1245.103(a), the effect of the waiver on the objectives of the related NASA programs, and any other available facts and information presented to the Board by an interested party. The Board shall then determine and make, if applicable, each of the specific findings of fact required by

§ 1245.104, § 1245.105, or §1245.106 under which the petition was submitted. The Board shall document its findings.

(b) *Recommendation of the Board.* (1) Except as provided in § 1245.104(e), after making the findings of fact, the Board shall formulate its proposed recommendation to the Administrator as to the grant of waiver as requested, the grant of waiver upon terms other than as requested, or denial of waiver.

(2) If the Board proposes to recommend, initially or upon reconsideration or after oral hearing, that the petition be granted in the extent requested or, in other cases, where the petitioner does not request reconsideration or a hearing during the period set for the action, or informs the Board that the action will not be requested, or fails to file the required statements within the prescribed time, the Board shall transmit the petition, a summary record of hearing proceedings, if applicable, its findings of fact, and its recommendation to the Administrator.

§ 1245.115 Action by the Administrator.

(a) After receiving the transmittal from the Board, the Administrator shall determine, in accordance with § 1245.103, whether or not to grant any waiver of rights to the petitioner. A waiver under § 1245.104(b)(2) will be granted only when the Board so recommends.

(b) In the event of denial of the petition by the Administrator, a written notice of such denial will be promptly transmitted by the Board to the petitioner. The written notice will be accompanied with a statement of the grounds for denial.

(c) If the waiver is granted by the Administrator, the petitioner shall be sent an original and one copy of an instrument of waiver confirmatory of the conditions and reservations of the waiver grant for its execution. The petitioner shall return the executed copy to the Chairperson within 30 days from the grant of waiver. Failure to return the copy within the prescribed time may result in revocation of the waiver of rights granted. Before the action is taken, notice shall be given to petitioner so that it may show cause before the Board why the waiver should not be revoked.

§ 1245.116 Filing of patent applications and reimbursement of costs.

(a) In order to protect the interests of the Government and the petitioner in inventions, a petitioner may file United States patent applications for such inventions prior to the Administrator's determination on a petition for waiver. If an application on an identified invention is filed during the pendency of the petition, or within 60 days prior to the receipt of a petition, NASA will reimburse the petitioner for any reasonable costs of the filing and patent prosecution that may have occurred, *Provided:*

(1) Similar patent filing and prosecution costs are not normally reimbursed to the petitioner as direct or indirect costs chargeable to Government contracts;

(2) The petition is ultimately denied with respect to domestic rights, or with respect to foreign and domestic rights, if both are requested; and

(3) Prior to reimbursement, petitioner assigns the application to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

§ 1245.117 Publication and record of decisions.

The findings of fact and recommendations made to the Administrator by the Board with respect to each petition for waiver shall be recorded by the Board and made available to the public. In addition, selected findings and recommendations of the Board shall be published annually.

§ 1245.118 Transitional provisions.

As to any invention made on or after July 1, 1981, in the performance of work under a contract (except for a contract for the operation of a Government-owned research or production facility), awarded prior to July 1, 1981, with a nonprofit organization or small business firm (as defined in 35 U.S.C. 201, 94 Stat. 3019 and NASA's implementing regulations, NASA PR 9.108), the Administrator may grant waiver of title without further consideration of the findings in § 1245.105 provided the contractor requests the waiver either at the time of reporting or within a reasonable period thereafter as the Board may set, as requested by the contractor. Any waiver so granted will be subject to:

(a) The reservation of § 1245.107(a);

(b) The march-in rights and provisions for preference for United States industry of 35 U.S.C. 203, 204, (94 Stat. 3022, 3023);

(c) The special provisions for nonprofit organizations of 35 U.S.C. 202(c)(7) (94 Stat. 3021); and

(d) The conditions for revocation and voidability of § 1245.109.

Subpart 2—Licensing of NASA Inventions

AUTHORITY: 35 U.S.C. secs. 207 and 208, 94 Stat. 3023 and 3024.

SOURCE: 46 FR 54328, Nov. 2, 1981, unless otherwise noted.

§ 1245.200 Scope of subpart.

This subpart prescribes the terms, conditions, and procedures upon which a NASA invention may be licensed. It does not affect licenses which (a) were in effect prior to July 1, 1981; (b) may exist at the time of the Government's acquisition of title to the invention, including those resulting from the allocation of rights to inventions made under Government research and development contracts; (c) are the result of an authorized exchange of rights in the settlement of patent disputes; or (d) are otherwise authorized by law or treaty.

§ 1245.201 Policy and objective.

It is the policy and objective of this subpart to use the patent system to promote the utilization of inventions arising from NASA supported research and development.

§ 1245.202 Definitions.

(a) "Federally owned invention" means an invention, plant, or design which is covered by a patent, or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection, in a foreign country, title to which has been assigned to or otherwise vested in the United States Government.

(b) "Federal agency" means an executive department, military department, Government corporation, or independent establishment, except the Tennessee Valley Authority, which has custody of a Federally owned invention.

(c) "NASA Invention" means a Federally owned invention with respect to which NASA maintains custody and administration, in whole or in part, of the right, title, or interest in such invention on behalf of the United States Government.

(d) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of these regulations, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and in subcontracting, contained in 13 CFR 121.3-12, will be used.

(e) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(f) "United States" means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1245.203 Authority to grant licenses.

NASA inventions shall be made available for licensing as deemed appropriate in the public interest. NASA may grant nonexclusive, partially exclusive, or exclusive licenses thereto under this subpart on inventions in its custody.

RESTRICTION AND CONDITIONS

§ 1245.204 All licenses granted under this subpart.

(a) *Restrictions.* (1) A license may be granted only if the applicant has supplied NASA with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under a NASA invention in the United States shall normally be granted only to a licensee who agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) *Conditions.* Licenses shall contain such terms and conditions as NASA determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this subpart. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated in accordance with this subpart.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of NASA, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The license may provide the licensee the right to grant sublicenses under the license, subject to the approval of NASA. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of such sublicense shall be furnished to NASA.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report periodically on the utilization or efforts at obtaining utilization that are being made by the licensee, with particular reference to the plan submitted.

(7) All licenses shall normally require royalties or other consideration.

(8) Where an agreement is obtained pursuant to § 1245.204(a)(2) that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of NASA to terminate the license, in whole or in part, if:

(i) NASA determines that the licensee is not executing the plan submitted with its request for a license and the licensee cannot otherwise demonstrate to the satisfaction of NASA that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) NASA determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated, consistent with this subpart, upon mutual agreement of NASA and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person any immunity from or defenses under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

TYPES OF LICENSES

§ 1245.205 Nonexclusive licenses.

(a) *Availability of licenses.* Nonexclusive licenses may be granted under NASA inventions without publication of availability or notice of a prospective license.

(b) *Conditions.* In addition to the provisions of § 1245.204, the nonexclusive license may also provide that, after termination of a period specified in the license agreement, NASA may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license in accordance with this subpart.

§ 1245.206 Exclusive and partially exclusive licenses.

(a) *Domestic licenses*—(1) *Availability of licenses.* Exclusive or partially exclusive licenses may be granted on NASA inventions:

(i) 3 months after notice of the invention's availability has been announced in the FEDERAL REGISTER; or

(ii) Without such notice where NASA determines that expeditious granting of such a license will best serve the interests of the Federal Government and the public; and

(iii) In either situation, specified in (a)(1)(i) or (ii) of this section only if:

(A) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period;

(B) After expiration of the period in § 1245.206(a)(1)(iii)(A) and consideration of nay written objections received during the period, NASA has determined that:

(*1*) The interests of the Federal Government and the public will best be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(*2*) The desired practial application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license which has been granted, or which may be granted, on the invention;

(*3*) Exclusive or partially exclusive licensing is a reasonable and necessary incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public; and

(*4*) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(C) NASA has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws; and

(D) NASA has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(2) *Conditions.* In addition to the provisions of § 1245.204, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall reserve to NASA the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(iii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iv) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of Chapter 29 of Title 35, U.S. Code, or other statutes, as determined appropriate in the public interest.

(b) *Foreign licenses*—(1) *Availability of licenses.* Exclusive or partially exclusive licenses may be granted on a NASA invention covered by a foreign patent, patent application, or other form of protection, provided that:

(i) Notice of a prospective license, identifying the invention and prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(ii) NASA has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(iii) NASA has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(2) *Conditions.* In addition to the provisions of § 1245.204, the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(i) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(ii) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(iii) The license may grant the licensee the right to take any suitable and necessary actions to protect the licensed property, on behalf of the Federal Government.

(c) *Record of determinations.* NASA shall maintain a record of determinations to grant exclusive or partially exclusive licenses.

PROCEDURES

§ 1245.207 Application for a license.

An application for a license should be addressed to the Patent Counsel at the NASA installation having responsibility for the invention and shall normally include:

(a) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of representative of applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether applicant is a small business firm as defined in § 1245.202(c);

(h) A detailed description of applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under Federally owned inventions;

(j) A statement containing applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§ 1245.208 Processing applications.

(a) Applications for licenses will be initially reviewed by the Patent Counsel of the NASA installation having responsibility for the invention. The Patent Counsel shall make a preliminary recommendation to the Director of Licensing, NASA Headquarters, whether to: (1) Grant the license as requested, (2) grant the license with modification after negotiation with the licensee, or (3) deny the license. The Director of Licensing shall review the preliminary recommendation of the Patent Counsel and make a final recommendation to the NASA Assistant General Counsel for Patent Matters. Such review and final recommendation may include, and be based on, any additional information obtained from applicant and other sources that the Patent Counsel and the Director of Licensing deem relevant to the license requested. The determination to grant or deny the license shall be made by the Assistant General Counsel for Patent Matters based on the final recommendation of the Director of Licensing.

(b) When notice of a prospective exclusive or partially exclusive license is published in the FEDERAL REGISTER in accordance with § 1245.206(a)(1)(iii)(A) or § 1245.206(b)(1)(i), any written objections received in response thereto will be considered by the Director of Licensing in making the final recommendation to the Assistant General Counsel for Patent Matters.

(c) If the requested license, including any negotiated modifications, is denied by the Assistant General Counsel for Patent Matters, the applicant may request reconsideration by filing a written request for reconsideration within 30 days after receiving notice of denial. This 30-day period may be extended for good cause.

(d) In addition to, or in lieu of requesting reconsideration, the applicant may also appeal the denial of the license in accordance with § 1245.211.

§ 1245.209 Notice to Attorney General.

A copy of the notice provided for in §§ 1245.206(a)(1)(iii)(A), and 1245.206(b)(1)(i) will be sent to the Attorney General.

§ 1245.210 Modification and termination of licenses.

Before modifying or terminating a license, other than by mutual agreement, NASA shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

§ 1245.211 Appeals.

(a) The following parties may appeal to the NASA Administrator or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(1) A person whose application for a license has been denied;

(2) A licensee whose license has been modified or terminated, in whole or in part; or

(3) A person who timely filed a written objection in response to the notice required by §§ 1245.206(a)(1)(iii)(A) or 1245.206(b)(1)(i) and who can demonstrate to the satisfaction of NASA that such person may be damaged by the Agency action.

(b) Written notice of appeal must be filed within 30 days (or such other time as may be authorized for good cause shown) after receiving notice of the adverse decision or determination; including, an adverse decision following the request for reconsideration under § 1245.208(c). The notice of appeal, along with all supporting documentation should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, DC 20546. Should the appeal raise a genuine dispute over material facts, fact-finding will be conducted by the NASA Inventions and Contributions Board. The person filing the appeal shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. The Chairperson of the Inventions and Contributions Board shall prepare written findings of fact and transmit them to the Administrator or designee. The decision on the appeal shall be made by the NASA Administrator or designee. There is no further right of administrative appeal from the decision of the Administrator or designee.

§ 1245.212 Protection and administration of inventions.

NASA may take any suitable and necessary steps to protect and administer rights to NASA inventions, either directly or through contract.

§ 1245.213 Transfer of custody.

NASA having custody of certain Federally owned inventions may transfer custody and administration in whole or in part, to another Federal agency, of the right, title, or interest in any such invention.

§ 1245.214 Confidentiality of information.

Title 35, U.S. Code, section 209, provides that any plan submitted pursuant to § 1245.207(h) and any report required by § 1245.204(b)(6) may be treated by NASA as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 U.S.C. 552.

Subpart 3—NASA Foreign Patent Program

AUTHORITY: 42 U.S.C. 2457(h) and Executive Orders 9865 and 10096.

SOURCE: 30 FR 1844, Feb. 10, 1965, unless otherwise noted.

§ 1245.300 Scope of subpart.

This subpart establishes policy, criteria, and procedures concerning the NASA Foreign Patent Program.

§ 1245.301 Inventions under NASA contracts.

(a) Pursuant to § 1245.113, NASA has facilitated the filing of foreign patent applications by contractors by providing for the granting of a waiver of title to a contractor to any identified invention in countries other than the United States in the event the Administrator of NASA does not desire to file a patent application covering the invention in such countries. However, any such waiver is subject to the reservation by the Administrator of the license required to be retained by NASA under section 305(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(f)).

(b) Conversely, where the principal rights in an invention made under a NASA contract remain in the contractor by virtue of waiver, § 1245.19(a)(5) provides that the contractor, upon written request, will convey to the Administrator of NASA the entire right, title, and interest in the invention in any foreign country in which the contractor has elected not to file a patent application.

(c) With respect to inventions in which NASA has acquired and retained the principal rights, NASA will file patent applications in countries other than the United States on inventions selected in accordance with the criteria set forth in § 1245.303.

§ 1245.302 Inventions by NASA employees.

(a) The foreign rights of NASA and of the NASA employee making an invention are determinable in accordance with Executive Orders 9865 and 10096 and Government Patent Board Administrative Order No. 6 issued pursuant thereto.

(b) Where NASA acquires an assignment of the domestic rights in an invention made by a NASA employee, NASA will also obtain an option to acquire the foreign rights, including the right to file foreign patent applications on the invention.

(c) Where NASA is entitled to only a governmental license in the invention, the principal foreign rights in the invention are retained by the employee unless he agrees in writing to assign such rights to NASA.

§ 1245.303 Criteria.

The following categories of inventions will be considered for the filing of patent applications by NASA in countries other than the United States:

(a) Inventions which may be utilized abroad in governmental programs of the United States.

(b) Inventions which may be exploited abroad in the public interest by license to U.S. nationals or others.

(c) Inventions which may be utilized in applications type satellites, such as communications and meteorological satellites.

(d) Inventions considered to be basic discoveries or of major significance in an art.

(e) Inventions in fields which directly concern the public health or public welfare.

§ 1245.304 Procedures.

(a) The patent counsel at each NASA field installation will review all invention disclosures at the time of docketing and will expedite the processing and preparation of a U.S. patent application, if justified, on those inventions which appear to fall within the criteria set forth in § 1245.303. The patent counsel will make a recommendation as to whether or not foreign patent coverage appears justified at the time of assigning a priority evaluation to a disclosed invention.

(b) Preparation and filing of patent applications in foreign countries will be subject to approval of the Assistant General Counsel for Patent Matters, NASA Headquarters.

(c) The Office of Assistant General Counsel for Patent Matters will budget for and administer the filing of all patent applications in countries other than the United States.

(d) Coordination with other interested NASA offices will be undertaken by the Assistant General Counsel for Patent Matters.

Subpart 4—Foreign Patent Licensing Regulations

Authority: 42 U.S.C. 2457(g) and (h).

Source: 31 FR 10958, Aug. 18, 1966, unless otherwise noted.

§ 1245.400 Scope of subpart.

(a) The subpart establishes the policy, terms, conditions, and procedures under which NASA-owned foreign patents and patent applications may be licensed.

(b) The provisions of this subpart apply to all NASA-owned patents granted in countries other than the United States and to NASA-owned patent applications pending in such countries and supplement the provisions of Subpart 2 of this part for foreign patent licensing.

§ 1245.401 Policy.

The foreign licensing program of the National Aeronautics and Space Administration serves to promote and utilize foreign patent rights vested in the Administration. The objectives of this program are to further the interests of United States industry in foreign commerce, to enhance the economic interests of the United States and to advance the international relationships of the United States.

§ 1245.402 Types of licenses and terms and conditions.

Licenses will be individually negotiated and may be granted to any applicant, foreign or domestic, on a nonexclusive or exclusive basis for royalties or other considerations and on such other terms and conditions as are deemed appropriate to the interests of the United States. Preference in the granting of foreign license rights will be shown to those applicants who have previously been granted a license under the corresponding U.S. patent or patent application.

§ 1245.403 Government license.

There will be reserved from each exclusive license an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government pursuant to any existing or future treaty or agreement with the United States.

§ 1245.404 Enforcement of patent rights.

An exclusive licensee will be authorized to enforce the licensed patent and to sue infringers of the patent at its own expense.

§ 1245.405 Procedures.

(a) NASA will publish in the United States, and elsewhere as may be appropriate, lists of NASA-owned foreign patents or patent applications available for licensing.

(b) NASA will also furnish written notice of the availability for licensing of NASA-owned foreign patents or patent applications to any licensee under the corresponding U.S. patent or patent application.

(c) Applications for license should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, D.C. 20456. The application must fully identify the patent or patent application, and state the type of license requested together with proposed terms and conditions thereof.

(d) The conduct of negotiations with prospective licensees will be the responsibility of the General Counsel, NASA. In the conduct of such negotiations, due regard shall be had for the possible interests of NASA program and staff offices, and their coordination will be obtained as deemed appropriate.

(e) NASA will publish notice in the FEDERAL REGISTER, and elsewhere as may be appropriate, of its intention to grant an exclusive license under an identified patent or patent application. An exclusive license will not be granted until the expiration of 60 days from the date of notice in order to provide a suitable time interval for interested persons or other Government agencies to interpose comment or objection.

(f) All licenses shall become effective upon the written acceptance by the licensee of a license instrument specifying the type of license and terms and conditions thereof.

Subpart 5—Authority and Delegations To Take Certain Actions Relating to Patents and Other Intellectual Property Rights

AUTHORITY: 42 U.S.C. 2473, 2457; 14 CFR 1204.506.

SOURCE: 43 FR 34122, Aug. 3, 1978, unless otherwise noted.

§ 1245.500 Scope.

This Subpart 5 sets forth the authority and delegations relating to intellectual property rights, and the administration of the NASA patent program.

§ 1245.501 General Counsel.

The General Counsel administers the NASA patent program and is delegated authority to take the following specific actions related to intellectual property, including patent, copyright, trademark and related matters:

(a) *Determination of rights.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the adminstrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, "Administration of a Uniform Patent Policy With Respect to the Domestic Rights in Inventions Made by Government Employees";

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way of either title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of, and other rights in inventions, patents, and applications for patents;

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.;

(f) *Certifications.* To exercise the authority of the Administrator with respect to certifications in support of requests for extensions of time under 35 U.S.C. 267;

(g) *Foreign patent program.* To exercise the authority of the Administrator in taking all necessary action to obtain and maintain patents in foreign countries, including the execution of instruments necessary for filing, prosecution, and maintenance of foreign applications and patents;

(h) *Authority under section 305 (d) and (e).* To represent the Administrator and to appoint attorneys to represent the Administrator in the conduct of business under sections 305 (d) and (e) of the National Aeronautics and Space Act of 1958, as amended, including execution of requests pursuant to said sections of the act that patents be issued to the Administrator on behalf of the United States or that title be transferred to the Administrator;

(i) *Acquisition authority.* To exercise the power conferred on the Administrator by the National Aeronautics and Space Act of 1958, as amended, to acquire an interest in patents and patent applications, including the purchase of such interests in settlement of claims for the unauthorized use of patented inventions and to acquire interests in copyrights, trademarks, and trade names;

(j) *Authority to settle copyright claims.* To exercise all powers conferred on the Administrator by 28 U.S.C. 1498(b), including the settlement of claims for copyright infringement;

(k) *Granting of licenses.* To make the determinations and to take any and all actions with respect to the licensing of NASA inventions vested in the Administrator by the NASA Domestic Patent Licensing Regulations, 14 CFR Subpart 1245.2 (NASA Management Instruction 5109.3) and the NASA Foreign Patent Licensing Regulations, 14 CFR Subpart 1245.4 (NASA Management Instruction 5109.5) to sign all FEDERAL REGISTER notice material required by the patent licensing regulations and to otherwise grant licenses on any invention in which the Administrator has reserved the right to grant licenses; and

(l) *Waiver determinations and instruments.* To sign for the Administrator attestations of determinations of grant or denial of waiver of title to inventions and to execute instruments of waiver, when in accordance with the recommendations of the Inventions and Contributions Board, and the NASA Patent Waiver Regulations, 14 CFR Subpart 1245.1 (NASA Management Instruction 5109.2).

§ 1245.502 Assistant General Counsel for Patent Matters.

The Assistant General Counsel for Patent Matters provides functional direction to all Patent Counsel and is redelegated the authority to take the following actions:

(a) *Rights determinations.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950 as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, "Administration of a Uniform Patent Policy With Respect to the Domestic

Rights in Inventions Made by Government Employees";

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way either of title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept, on behalf of the United States, licenses under, assignments of, and other rights in inventions, patents, and applications for patents; and

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.

§ 1245.503 Patent Counsel of Field Installations.

Patent Counsel of Field Installations and Patent Counsel, NASA Resident Legal Office, Pasadena, Calif., are redelegated authority to take the following actions:

(a) *Rights determinations.* To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of their installations in those instances where the Government is entitled to obtain the entire right, title, and interest, and to make such determinations, with the concurrence of the Assistant General Counsel for Patent Matters, in those instances where the Government acquires less than the entire domestic right, title and interest.

(b) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of and other rights in inventions, patents, and applications for patents.

§ 1245.504 Further redelegation.

None authorized except by virtue of succession.

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

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APPENDIX A—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

AUTHORITY: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d-1; and the laws listed in Appendix A to this part.

SOURCE: 30 FR 301, Jan. 9, 1965, unless otherwise noted.

§ 1250.100 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as "the Act") to the end that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the National Aeronautics and Space Administration, hereinafter referred to as NASA.

§ 1250.101 Applicability.

(a) *Covered programs.* (1) This part applies to any program for which Federal financial assistance is authorized under a law administered by NASA, including the federally-assisted programs and activities listed in Appendix A to this part. The fact that a program or activity is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereafter enacted may be added to Appendix A by notice published in the FEDERAL REGISTER.

(2) This part applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date.

(b) *Excluded activities.* This part does not apply to (1) any Federal financial assistance by way of insurance or guaranty contracts, (2) money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except as provided in paragraph (a) of this section, (3) any assistance to any individual who is the ultimate beneficiary under any such program, (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as provided in § 1250.103-3, (5) contracts not covered in the programs listed in Appendix A, or (6) advances, V-loans, and other financial assistance made incident to NASA procurements not covered in the programs listed in Appendix A.

§ 1250.102 Definitions.

As used in this part—

(a) "Administrator" means the Administrator of the NASA.

(b) "Applicable" means one who submits an application, request, proposal, or plan required to be approved by a responsible NASA official, or by a primary recipient, as a condition to eligibility for Federal financial assistance; and the term "application" means such an application, request, proposal or plan.

(c) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(d) "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(e) "NASA" means the National Aeronautics and Space Administration.

(f) "Primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) "Principal Compliance Officer" means the Director, Equal Employment Opportunity Office, Office of Organization and Management, NASA Headquarters, or any successor officer to whom the Administrator should delegate authority to perform the functions assigned to the Principal Compliance Officer by this part.

(h) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training) whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(i) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) "Responsible NASA official" means:

(1) The heads of Offices at NASA Headquarters responsible for making grants, and contracts of the kind listed in Appendix A; and

(2) Each Director of a field installation which makes or administers grants and contracts of the kind listed in Appendix A, or any officer to whom he has delegated authority to act within the areas of responsibility assigned to him under this part.

(k) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

§ 1250.103 Discrimination prohibited.

§ 1250.103-1 General.

No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

§ 1250.103-2 Specific discriminatory acts prohibited.

(a) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny an individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(5) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(6) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(7) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from

that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in § 1250.103-3).

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(e) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in § 1250.103-1. This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practices or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

§ 1250.103-3 Employment practices.

(a) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not directly or through contractual or other arrangements subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (1) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, or (2) to provide work experience which contributes to the education or training of such individuals.

(b) Employment opportunities provided in connection with any of the programs listed in Appendix A, which opportunities are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments, are programs of the kind described in paragraph (a) (1) and (2) of this section.

(c) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Executive Order 11246 or any Executive order which supersedes it.

(d) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

§ 1250.103-4 Illustrative applications.

(a) In training grant programs discrimination is forbidden in the selection or eligibility of individuals to be trained and in their treatment by the grantee during their training. In any case where selection is made from a predetermined group, such as the students in an institution, the group must have been selected without discrimination.

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university unless it satisfies the responsible NASA official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(c) Discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(d) In a research or training grant, discrimination is prohibited with respect to the availability of any educational activity and any provision of medical or other services and any financial aid to individuals incident to the grant.

(e) Upon transfers of real or personal property for research or educational uses, discrimination is forbidden to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(f) In some situations even though past discriminatory practices have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 1250.105 to provide information as to the availability of the program or activity, and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(g) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.103-5 Special programs.

An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

§ 1250.103-6 Medical emergencies.

Notwithstanding the provisions of §§ 1250.103 to 1250.103-5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with § 1250.103-1, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with § 1250.103-1.

§ 1250.104 Assurances.

(a) *General requirement.* Every application for Federal financial assistance to carry out a program to which this part applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain, be accompanied by, or identify and make reference to, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. If the assurance is not made a part of the application, the application shall identify the assurance which is applicable to the application. One assurance shall suffice for all applications of an applicant if the assurance complies with the conditions made applicable by this part to each such application for Federal financial assistance. Every assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Duration of assurances.* The period of time to be covered by the assurances required under this § 1250.104 shall be as follows:

(1) *Real property.* In the case of an application for Federal financial assistance for providing real property or structures thereon, the assurance shall obligate the recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) *Personal property.* In the case of an application for Federal financial assistance for providing personal property, the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property.

(3) *Other kinds of Federal financial assistance.* In the case of an application for any other kind of Federal financial assistance, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(c) *Assurances for research, training, or educational programs.* (1) In the case of application by an institution of higher education or any other organization for Federal financial assistance for a program or activity which involves participation by students, fellows or trainees, including but not limited to assistance for research, training, or the provision of facilities, the assurance required by this § 1250.104 shall extend to admission practices and to all other practices relating to the treatment of students or other participants.

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant unless the applicant establishes, to the satisfaction of the officer administering the program or activity involved, that its practices in designated parts or programs of the organization of the applicant will in no way affect its practices in the program of the applicant for which Federal financial assistance is sought, or the beneficiaries of or participants in such program.

(d) *Assurances for construction of facilities.* (1) In the case of assistance for the construction of a facility, or part thereof, the assurance shall extend to the entire facility and to facilities operated in connection therewith. In grants to assist in the construction of facilities for the provision of research, training, or educational services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be forbidden as a condition of grants for the support of such services. Thus, as a condition of grants for the construction of academic, research or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. Also, see paragraph (c) of this section for the requirement as to the applicability of the assurance to the applicant's organization.

(2) In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(e) *Instrument effecting or recording transfers of real property.* The instrument effecting or recording the transfer, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible NASA official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(f) *Assurances for transfer of surplus real property.* Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

(g) *Form of assurances.* The responsible NASA officials shall specify the form of assurances required by this § 1250.104 and the extent to which like assurances will be required by subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program.

(h) *Requests for proposals.* Any request for proposals issued by NASA which relates to covered financial assistance listed in Appendix A shall have set forth therein or have attached thereto the assurance prescribed in accordance with paragraph (g) of this section, and shall require that the proposer either include the assurance as a part of his signed proposal or identify and refer to an assurance already signed and submitted by the proposer.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.105 Compliance information.

(a) *Cooperation and assistance.* Each responsible NASA official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Principal Compliance Officer or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Principal Compliance Officer or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) *Access to sources of information.* Each recipient shall permit access by the Principal Compliance Officer or his designee during normal business hours to such of its books, records, accounts and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and that agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Principal Compliance Officer finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this part.

§ 1250.106 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible NASA official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Principal Compliance Officer or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Principal Compliance Officer or his designee.

(c) *Investigations.* The Principal Compliance Officer or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Principal Compliance Officer or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1250.107.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible NASA official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1250.107 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1250.104.* If an applicant fails or refuses to furnish an assurance required under § 1250.104 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. NASA shall not be obligated to provide assistance in such a case during the pendency of the administrative proceedings under such subsection except that NASA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible NASA official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Administrator pursuant to § 1250.109(e), and (4) the expiration of 30 days after the Administrator has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Principal Compliance Officer has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.108 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1250.107(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Principal Compliance Officer that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1250.107(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at NASA Headquarters in Washington, D.C., at a time fixed by the Principal Compliance Officer unless he determines that the convenience of the applicant or recipient or of NASA requires that another place be selected. Hearings shall be held before the Administrator, or, at his discretion, before a hearing examiner designated in conformity with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and NASA shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (section 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments, and briefs, requests for findings, and other related matters. Both NASA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Administrator may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with the part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 1250.109.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.109 Decisions and notices.

(a) *Decision by person other than the NASA Principal Compliance Officer.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Principal Compliance Officer for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the Principal Compliance Officer his exceptions to the initial decision with his reasons therefor. In the absence of exceptions, the Principal Compliance Officer may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Principal Compliance Officer shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Principal Compliance Officer.

(b) *Decisions on record or review by the NASA Principal Compliance Officer.* Whenever a record is certified to the Principal Compliance Officer for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Administrator conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Principal Compliance Officer shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1250.108, a decision shall be made by the Principal Compliance Officer on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or the Principal Compliance Officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by administrator.* Any final decision of the NASA Principal Compliance Officer which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its non-compliance and satisfies the Principal Compliance Officer that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Principal Compliance Officer to restore fully the eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Principal Compliance Officer determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Principal Compliance Officer denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the Principal Compliance Officer. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.110 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1250.111 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of NASA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Instruction. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 10925 and 11246 and regulations or instructions issued thereunder, or (2) any other regulations or instructions, insofar as such other regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible NASA official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to financial assistance to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Administrator may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 1250.109), including the achievement of effective coordination and maximum uniformity within NASA and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action has been taken by the responsible official of this agency.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17937, July 5, 1973]

§ 1250.112 Relationship with other officials.

NASA officials, in performing the functions assigned to them by this part, are responsible for recognizing the delegations of authority and responsibility of other NASA officials and for seeing the actions taken or instructions issued by them are properly coordinated with the offices and divisions having joint interests.

APPENDIX A—NASA FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS PART APPLIES

1. Grants made under the authority of Pub. L. 85-934, approved September 6, 1958 (42 U.S.C. 1891-1893).

2. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of section 2 of Pub. L. 85-934, approved September 6, 1938 (42 U.S.C. 1892).

3. Training grants made under the authority of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451-2460, 2472-2473).

4. Facilities grants made under authority in annual NASA authorization and appropriation acts.

[30 FR 301, Jan. 9, 1965, as amended at 38 FR 17936, July 5, 1973]

PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

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1251.400 Procedures for compliance.

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 374 (29 U.S.C. 794, Executive Order 11914 (41 FR 17871, Apr. 28, 1976)).

SOURCE: 44 FR 52680, Sept. 10, 1979, unless otherwise noted.

Subpart 1251.1—General Provisions

§ 1251.100 Purpose.

This part effectuates section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1251.101 Application.

This part applies to each recipient of Federal financial assistance from the National Aeronautics and Space Administration and to each program or activity that receives or benefits from such assistance.

§ 1251.102 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Director" means the Director of the Office of Equal Opportunity for NASA.

(d) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entry, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a NASA official or by a recipient as a condition to becoming a recipient.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) "Handicapped person." (1) "Handicapped persons" means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities,

(ii) Has a record of such an impairment, or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (h)(1) of this section, the phrase "physical or mental impairment" means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(iii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iv) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(v) "Is regarded as having an impairment" means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments defined in this paragraph but is treated by a recipient as having such an impairment.

(i) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(j) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

§ 1251.103 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefits, or services, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program.

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped persons and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Recipients shall take appropriate steps to insure that no handicapped individual is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in any program receiving or benefiting from Federal financial assistance because of the absence of auxiliary aids for individuals with impaired sensory, manual, or speaking skills.

(4) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(5) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(6) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(7) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(8) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

§ 1251.104 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to NASA.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(3) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from NASA, the covenant shall also include a condition coupled with a right to be reserved by NASA to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 1251.105 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipient to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 of this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part, or within one year of first becoming a recipient:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years follow completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request:

(i)A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

§ 1251.106 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 1251.107 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 1251.106(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipent may meet the requirement of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 1251.108 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 1251.106 and 1251.107, in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 1251.109 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart 1251.2—Employment Practices

§ 1251.200 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under the Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 1251.201 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 1251.202 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 1251.203 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1251.105(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 1251.105(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, *Provided*, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart 1251.3—Program Accessibility

§ 1251.300 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 1251.301 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides to beneficiaries; home visits; delivery of health, welfare, or other social services at alternate accessible sites; alteration of existing facilities and construction of new facilities in conformance with the requirements of § 1251.302; or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 1251.302 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction (ground breaking) was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc., (ANSIA117.1-1961 (R1971)),[1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Subpart 1251.4—Procedures

§ 1251.400 Procedures for compliance.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 1250.106, 1250.108 and 1250.110 of this chapter.

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart 1252.1—General

Sec.

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[1] Copies obtainable from American National Standards Institute, 1430 Broadway, New York, NY 10018.

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR Part 90).

SOURCE: 50 FR 13311, Apr. 4, 1985, unless otherwise noted.

Subpart 1252.1—General

§ 1252.100 What is the purpose of NASA's age discrimination regulations?

The purpose of these regulations is to set out NASA's policies and to implement agencywide or agency procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR Part 90. (Published at 44 FR 33768, June 12, 1979.) The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and the governmentwide regulations.

§ 1252.102 To what programs do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by NASA.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected body which:

(i) Provides any benefits or assistance to persons based on age, or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 *et seq.*).

§ 1252.103 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended. (Title III of Pub. L. 94-135.)

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "NASA" means the National Aeronautics and Space Administration.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or interest in or use of property, including:

(i) Transfer or lease of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) "Administrator" means the Administrator of the National Aeronautics and Space Administration or designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extents or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart 1252.2—Standards for Determining Age Discrimination

§ 1252.200 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1252.201.

(a) *General rule:* No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 1252.201 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, state statute or local statute or ordinance adopted by any elected, general purpose legislative body.

(b) Normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by § 1252.200 if the action reasonably takes into account age as a factor necessary to the normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure of approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 1252.200 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1252.202 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 1252.201 (b) and (c) is on the recipient of Federal financial assistance.

§ 1252.203 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provision of § 1252.10.

Subpart 1252.3—Responsibilities of Recipients

§ 1252.300 General responsibilities of recipients.

Each NASA recipient must ensure that its programs and activities comply with these regulations.

§ 1252.301 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from NASA to subrecipients, the recipient shall provide the subrecipient written notice of their obligations under these regulations.

§ 1252.302 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from NASA shall sign a written assurance as specified by NASA that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41, NASA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from NASA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the NASA regulations, the recipient shall take corrective action.

§ 1252.303 Information requirements.

(a) Keep records in a form that contains information which NASA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to NASA, upon request, information and reports which NASA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by NASA to the books, records, accounts, and other recipient facilities and sources of information to the extent NASA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

§ 1252.400 Compliance reviews.

(a) NASA may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NASA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, NASA will attempt to secure the recipient's voluntary compliance with the Act. If voluntary compliance cannot be achieved, NASA will arrange for enforcement as described in § 1252.405.

§ 1252.401 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NASA, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NASA may extend this time limit.

(b) NASA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement, which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and assigned by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact NASA for information and assistance regarding the complaint resolution process.

(c) NASA will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 1252.402 Mediation.

(a) Referral of complaints for mediation. NASA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NASA will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NASA. NASA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement. However, NASA retains the right to monitor the recipient's compliance with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) NASA will use the mediation process for a maximum of 60 days after receiving a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time NASA receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to NASA.

§ 1252.403 Investigation.

(a) *Informal inquiry.* (1) NASA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial inquiry, NASA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the

parties. NASA may seek the assistance of any involved State program agency.

(3) NASA will put any agreement in writing and have it signed by the parties and an authorized official at NASA.

(4) The settlement shall not affect the operation of any other enforcement effort of NASA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If NASA cannot resolve the complaint through informal means it will develop formal findings through further investigations of the complaint. If the investigation indicates a violation of these regulations, NASA will attempt to obtain voluntary compliance. If NASA cannot obtain voluntary compliance, it will begin enforcement as described in § 1252.405.

§ 1252.404 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of NASA's investigation, conciliation, and enforcement process.

§ 1252.405 Compliance procedure.

(a) NASA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from NASA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from NASA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NASA will limit any termination under § 1252.405(a)(1) to the particular program activity NASA finds in violations of these regulations. NASA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from NASA.

(c) NASA will take no action under paragraph (a) until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) NASA also may defer granting new Federal financial assistance from NASA to a recipient when a hearing under § 1252.405(a)(1) is initiated.

(1) New Federal financial assistance from NASA includes all assistance for which NASA requires an application or approval, including renewal or continuation of existing activities during the deferral period. New Federal financial assistance from NASA does not include assistance approved prior to the beginning of a hearing under § 1252.405(a)(1).

(2) NASA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 1252.405(a)(1). NASA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and

the Administrator. NASA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 1252.406 Hearings.

The procedural provisions for those hearings required by § 1252.405 are contained in 14 CFR 1250.108.

§ 1252.407 Notices, decisions, and post-termination proceedings.

All notices, decisions, and post-termination proceedings, insofar as NASA is concerned, shall be made in accordance with 14 CFR 1250.109.

§ 1252.408 Remedial action by recipients.

(a) Where NASA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NASA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NASA may require both recipients to take remedial action.

(b) Even in the absence of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipients program or activity on the basis of age.

§ 1252.409 Alternate funds disbursal procedure.

(a) When NASA withholds funds from a recipient under these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 1252.410 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and NASA has made no finding with regard to the complaint; or

(2) NASA issues any findings in favor of the recipient.

(b) If NASA fails to make a finding within 180 days or issues a finding in favor of the recipient, NASA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint.

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and

(iv) That the notice must state: the alleged violation of the act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 1252.411 Age distinctions.

There are no Federal statutes or regulations containing age distinctions which affect financial assistance administered by the agency.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

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Authority: Pub. L. 95-224, 92 Stat. 3 (41 U.S.C. 501 et seq.)

Source: 46 FR 63223, Dec. 31, 1981, unless otherwise noted.

Subpart 1—General

§ 1260.100 Purpose.

This Part 1260, issued by the Director of Procurement under authority delegated by the Administrator, establishes for the National Aeronautics and Space Administration (NASA) uniform policies and procedures relating to the negotiation, award and administration of research grants and cooperative agreements with educational institutions and other nonprofit organizations, under the authority of Pub. L. 95-224 (41 U.S.C. 501 et seq.).

§ 1260.101 Applicability.

This part applies to all research grants and cooperative agreements made by NASA with educational institutions and other nonprofit organizations.

§ 1260.102 Arrangement of part.

(a) *General plan.* This part is divided into subparts. Each one deals with a separate aspect of research grants and cooperative agreements, and is further subdivided into sections.

(b) *Numbering.* The numbering of individual sections and pages is not necessarily consecutive, and is designed to permit subsequent insertion of additional sections and pages within the appropriate subpart. The first digit of a section number indicates the subpart, and the second two digits indicate the section sequence in that subpart in which the particular section is set forth. Thus, § 1260.203 indicates the third section in Subpart 2 of this part.

§ 1260.103 Contents.

This Part 1260 is published to achieve maximum uniformity throughout NASA and will be amended from time to time. Personnel involved with grants and cooperative agreements are encouraged to submit suggestions for improving the procedures set forth in this part. Such suggestions should be submitted to the Office of Procurement, NASA Headquarters (Code HP-1).

§ 1260.104 Amendment.

(a) *Changes.* This part will be amended by issuance of printed loose-leaf "Changes" containing revised or additional pages, sections, or subparts. Each revised or new page of a change will bear, at the top, the date of the change and the change number. Changes to this part will be published in the FEDERAL REGISTER.

(b) *NASA Grant and Cooperative Agreement Handbook Instruction.* The Handbook may be amended by means of a NASA Grant and Cooperative Agreement Handbook Instruction when (1) it is necessary to provide rapid dissemination of new or revised grant and cooperative agreement policies or procedures pending their incorporation into the next published change to the Handbook, or (2) the policy or procedure is expected to be effective for 1 year or less. The NASA Grant and Cooperative Agreement Handbook Instructions will be numbered consecutively.

§ 1260.105 Dissemination and effective date of the part and amendments.

(a) The NASA grant and cooperative agreement handbook, Changes and Instructions will be distributed directly to NASA installations. The number of copies of the Handbook, Changes, and Instructions will be distributed on the basis of the requirements furnished by each Headquarters Staff Office, Headquarters Program Office, and NASA installation to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP-1).

(b) Directors of Installations and the Procurement Policy Division at Headquarters will ensure that copies of the NASA Grant and Cooperative Agreement Handbook are distributed to all interested activities and individuals within their installation.

(c) Copies of the NASA Grant and Cooperative Agreement Handbook, Changes and Instructions may be purchased by private concerns, universities and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

(d) Compliance with an amendment to the NASA Grant and Cooperative Agreement Handbook shall be optional effective with the date of issuance thereof, and shall be mandatory effective 60 days thereafter, except as may be otherwise prescribed in a Change or Instruction.

§ 1260.106 Deviations.

(a) *Applicability.* A deviation shall be considered to be any of the following:

(1) When a prescribed grant or cooperative agreement clause is set forth verbatim in this part, use of a clause covering the same subject matter which varies from, or has the effect of

altering, the prescribed clause, or changing its application;

(2) When a grant or cooperative agreement clause is set forth in this part but not for use verbatim, use of a clause covering the same subject matter which is inconsistent with the intent, principle and substance of the part clause or related coverage of the subject matter;

(3) Omission of any mandatory grant or cooperative agreement clause;

(4) When a NASA or other form is prescribed by this part, use of any other form for the same purpose;

(5) Alteration of a NASA or other form prescribed in this part except as authorized herein;

(6) When limitations are imposed by this part upon the use of a grant or cooperative agreement clause, form, procedure, or any other grant or cooperative agreement action, the imposition of lesser or greater limitations; or

(7) When a policy, procedure, method, or practice of conducting grant actions is prescribed in this part, any policy, procedure, method, or practice inconsistent therewith.

(b) *Approval of deviations.* Deviations from this part 1260 will be authorized only when essential to effect necessary grant or cooperative agreement actions or where special circumstances make such deviations clearly in the best interests of the Government. Such deviations will be approved only by the Director of Procurement or a duly authorized representative.

(c) *Request for deviations.* Requests for authority to deviate from this Part 1260 shall be submitted to the Director of Procurement, NASA Headquarters (Code HS-1). Such requests shall be signed by the Procurement Officer of a field installation (or the Director of the Division in the case of the Headquarters Contracts and Grants Division) and shall be submitted as far in advance as exigencies of the situation will permit.

(d) Each request for a deviation shall contain as a minimum:

(1) Identification of the part requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

(5) The name of the grantee or party to a cooperative agreement and identification of the grant or cooperative agreement affected, including the dollar value; and

(6) Detailed rationale for the request, including any pertinent background information, that will contribute to a fuller understanding of the deviation sought.

§ 1260.107 Definitions.

As used throughout this Part 1260, the words and terms defined in this section shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular subpart or portion thereof. In particular, the term "grant" applies to "grant" and "cooperative agreement" unless otherwise indicated.

(a) *Administrator.* The Administrator or Deputy Administrator of NASA.

(b) *Director of Procurement.* The Director of Procurement, Office of Procurement, NASA Headquarters (Code H).

(c) *Basic research.* Systematic, intensive study directed toward greater knowlege or understanding of the subject studied.

(d) *Educational institution.* Any institution which (1) has a faculty, (2) offers courses of instruction and (3) is authorized to award a degree upon completion of a specific course of study.

(e) *Equipment.* As used in this part, "equipment" is another term for nonexpendable personal property.

(1) *Government furnished equipment.* Equipment in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to a grantee.

(2) *Acquired equipment.* Equipment purchased or fabricated with grant or

cooperative agreement funds by a recipient, for the performance of research under its grant or cooperative agreement.

(f) *Grants officer.* A contracting officer who has been delegated authority to award and administer grants and cooperative agreements.

(g) *Grant specialist.* Any employee of NASA who is assigned the responsibility of negotiating with potential grantees the terms and conditions of specific grants and cooperative agreements, and the administration of such grants or cooperative agreements.

(h) *NASA.* The National Aeronautics and Space Administration.

(i) *Subcontract.* A written agreement between a grantee and a third party for the furnishing of services or supplies necessary to carry out the research under a grant or cooperative agreement.

(j) *Support.* Funding of a research project meeting NASA mission objectives.

(k) *Technical officer.* The official of the cognizant NASA program office who is responsible for monitoring the technical aspects of the work under a grant or cooperative agreement.

Subpart 2—Basic Policies

§ 1260.200 Authority.

Under the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224 (41 U.S.C. 501 *et seq.*), NASA is authorized to award grants and cooperative agreements. Pub. L. 95-224 includes (as section 7(b)) the substance of the repealed "Grants Act" (42 U.S.C. 1891, 1892) pertaining to the vesting of title to equipment purchased with Federal funds in a nonprofit organization. It expands this authority to other tangible personal property and applies to cooperative agreements and contracts as well as grants.

§ 1260.201 Policy.

(a) NASA policy is to use the grant instrument to sponsor required basic research at nonprofit institutions or organizations when it is desired (1) to accomplish a public purpose of support or stimulation in the area of basic research, (2) when no substantial NASA involvement in the technical performance is anticipated, (3) to provide latitude to investigators that will encourage maximum creativity, and (4) to have the minimum administration consistent with the public interest.

(b) NASA policy is to use the cooperative agreement for the same purpose as grants, except that substantial Federal involvement in significant aspects of the effort are necessary for its accomplishment.

(c) In addition, it is NASA policy to provide appropriate continuity of support in research sponsored under grants.

§ 1260.202 Proposals.

(a) *General.* An activity leading to a grant or cooperative agreement must be supported by a valid proposal from the prospective recipient organization. Proposals are not categorized as "grant proposal" or "contract proposal." In many cases the proposals received will be unsolicited. However, instrument selection under the Federal Grant and Cooperative Agreement Act, Pub. L. 95-224, is independent of proposal type; therefore, some grants and cooperative agreements will be based on solicitations. This Subpart 2 provides information for the grants officer in processing actions based on either type of proposal.

(b) *Unsolicited proposals*—(1) *References.* 41 CFR Ch. 18, 4.9 contains basic agency guidance on unsolicited proposals applicable to all classes of performers. NASA Management Instruction 8330.1, "Unsolicited Proposals From Universities," provides additional guidance for educational institutions only. Proposal submission information for educational institutions is covered in "The NASA-University Program: A Guide to Policies and Procedures," which should be provided to academic researchers in response to requests.

(2) *Policy.* It is NASA policy to foster and encourage the submission of unsolicited proposals and, in particular, to develop policies and procedures which not only encourage their submission, but which avoid, to the extent possible, those factors which

tend to discourage the generation and acceptance of innovative ideas by the unsolicited proposal mechanism (see 41 CFR Ch. 18, 4.903).

(3) An unsolicited proposal, by definition, is a written offer to perform a proposed task or effort, initiated and submitted to NASA by an institution without a solicitation by NASA. It is important to note that contact with agency technical personnel prior to proposal submission is permissible and is encouraged to determine if preparation of a formal submission is warranted. Such discussions, confined to the limited objectives of conveying to the potential offeror an understanding of the agency mission and needs relative to the type of effort contemplated, do not jeopardize the unsolicited status of any subsequently submitted proposal. (See 41 CFR, Ch. 18, 4.904 and 4.905.)

(4) *Proposal validity.* The validity of a proposal received with a procurement package should be verified. In particular, it must have been approved by a responsible official or authorized representative of the organization submitting the proposal, or a person authorized to contractually obligate the organization. (See 41 CFR, Ch. 18, 4.909.) Incomplete or sketchy "informal" or "preliminary" proposals or technical correspondence, as defined by 41 CFR, Ch. 18, 4.904 and 4.908(d), do not qualify as unsolicited proposals.

(5) If any such invalid proposals are received for procurement action, the grants officer should give the institution an opportunity to provide the missing information. (See 41 CFR, Ch. 18, 4.909.) In the event excessive delay or possible cancellation of the procurement is contemplated, the procurement request initiator should be notified.

(6) *Proposals from other agencies.* NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or the Jet Propulsion Laboratory, Pasadena, CA without the express consent of the offeror. (See 41 CFR Ch. 18, 4.912(a).) In the event such a proposal is received as the basis for a procurement action and the required consent is lacking, the grants officer should contact the institution to determine if conversion to a formal submission to NASA is desired. The institution may at that time submit any desired revisions or other material necessary. The procurement initiator should be notified of any substantive changes.

(7) *Use of data.* Some proposals may have a notice on the cover intended to maintain trade secret rights. The notice set forth in 41 CFR, Ch. 18, 1.304-2 is:

> Data on pages —— of this proposal constitute a trade secret. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes: *Provided, however,* In the event a contract is awarded on this proposal, the Government may obtain in the contract additional rights to use and disclose this data.

If the grants officer receives an unsolicited proposal containing a notice and the terms are more restrictive than those provided in the notice above, the grants officer shall inquire whether the offeror is willing to accept the conditions of the notice set forth in 41 CFR, Ch 18, 1.304-2. Should the offeror not agree, local counsel should be consulted concerning the legal effect of the more restrictive conditions imposed by the offeror. (See 41 CFR, Ch. 18, 4.913.) This situation should rarely occur in actions with universities.

(8) *Prohibitions.* NASA shall not permit all or any part of an unsolicited proposal to be used as the basis, or portion of, a solicitation, or in negotiation with other organizations unless the offeror is notified of and agrees to the intended use. However, nothing herein precludes the Government from using any data, concept or idea which it could have used had the unsolicited proposal not been submitted. (See 41 CFR, Ch. 18, 4.911.)

(9) *Foreign proposals.* Proposals from foreign sources are additionally subject to the provisions of NASA Procurement Directive 1362.1, "Initiation and Development of International Participation and Cooperation in Aeronautical and Space Program." Field installations will forward purchase requests for foreign proposals to the Headquarters Contracts and Grants Division, Code HW-2, through

the International Affairs Division, Code LI, for procurement action. (See 41 CFR, Ch. 18, 4.914.)

(10) *Justification for acceptance.* (i) A negotiated, noncompetitive grant or cooperative agreement is permissible and will be used when an unsolicited proposal has received a favorable technical evaluation, except as noted in paragraph (b)(4) of this section. The technical office sponsoring the procurement shall support its recommendation with a "Justification for Acceptance of Unsolicited Proposal." The "Justification" shall be based on a comprehensive evaluation of the proposal. The "Justification" shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action. Consideration shall include the following evaluation factors (see 41 CFR, Ch. 18, 4.910(b)):

(A) Unique, innovative, or meritorious methods, approaches, or ideas which have originated with or have been assembled together by the offeror that are contained in the proposed effort or activity;

(B) Overall scientific, technical, or socio-economic merits of the proposed effort or activity;

(C) Potential contribution which the proposed effort is expected to make to the agency's specific mission, if pursued at this time;

(D) Capabilities, related experience, facilities, or techniques, or unique combinations thereof which the offeror possesses and offers, and which are considered to be integral factors for achieving the scientific, technical, or socio-economic objective(s) of the proposal; and

(E) Qualifications capabilities and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal (see 41 CFR, Ch. 18, 4.909(d)).

(ii) In reviewing the "Justification" the grants officer should bear in mind that paragraph (b)(10)(i) is generally descriptive of research as performed by academic institutions and of research typically suitable for support by a grant or cooperative agreement. Since research proposals of this type are intellectual products, it is inappropriate and unrealistic to attempt to establish that no one else can perform similar research. It is only necessary to establish that the proposal is the only one available for the type of effort contemplated or has better promise than related or overlapping ones available for evaluation at the same time.

(iii) In isolated instances, a favorable comprehensive evaluation of a university unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. When a document qualifies as an unsolicited proposal but the substance (A) is available to the Government without restriction from another source or (B) closely resembles that of a pending competitive solicitation, or (C) is otherwise not sufficiently unique to justify acceptance, the unsolicited proposal shall not be acceptable. When procurement is intended and competition is feasible, the proposal shall be returned to the offeror together with the reasons for the return. The procurement request initiator shall be notified before such action is taken. (See 41 CFR, Ch. 18, 4.910(a).)

(iv) When it is determined that the subject matter of an unsolicited proposal is acceptable for award on a noncompetitive basis, the unsolicited proposal will serve as the basis for negotiation. (See 41 CFR Ch. 18, 4.910(c).) A Request for Proposal (RFP) or a Request for Quotation (RFQ) will not be used to obtain any additional information or revisions. In this connection, note that the manner and extent of the evaluation of the scientific/technical and the price/cost portions of unsolicited proposals is the responsibility of officers having substantive responsibilities for these areas. (See 41 CFR, Ch. 18, 4.909(e).)

(v) Proposals for renewal of on-going projects are generally simpler as less detailed information or justification is required. However, they should cover the basic information required for procurement action, with particular emphasis on changes since the original award was made. (See 41 CFR Ch. 18, 4.906(d).) Simplified procedures should be used wherever possible to expedite renewals, particularly when continuing or step funded awards are involved.

(vi) Justifications will normally be prepared by the procurement request initiator on an individual proposal basis. However, where a number of similar proposals are peer reviewed in a group or as the result of a Space Science Announcement, Applications Announcement or similar announcement, a simplified procedure may be used. This is particularly applicable where the evaluation is conducted by Headquarters and the proposals subsequently transferred to a field center for all further processing and award.

(vii) Accordingly, in instances where unsolicited proposals are received as a result of an open notice issued in accordance with 41 CFR, Ch. 18, 4.908(b)(i), the following justification format, to be executed by the technical office which issued the open notice, may be used to satisfy the requirements of 41 CFR, Ch. 18, 4.910(b).

(FORMAT)—JUSTIFICATION FOR ACCEPTANCE OF UNSOLICITED PROPOSAL

I recommend that NASA negotiate only with (*Organization and location*) for a technical study/investigation entitled: (*proposal title*), which is related to the (Name of) discipline field of the (Name of) Program. This recommendation is made on the basis of a favorable comprehensive evaluation in accordance with applicable provisions of NASA Procurement Regulation (NPR) 4.909, and is submitted in accordance with applicable provisions of NPR 4.910. This recommendation is made for the following reason(s): (*insert one or more, but not necessarily all*)

(i) The proposed effort contains unique, innovative (or meritorious) methods (approaches or ideas) which have orginated with (and/or been assembled together by) the offeror;

(ii) A significant degree of scientific/technical merit is in the proposed effort;

(iii) The proposed effort is expected to make a noticeable, positive contribution to the (Name of) Program, if supported at this time;

(iv) The proposed effort has value to the (Name of) Program, not previously recognized by NASA.

(v) The qualifications, capabilities and experience of the proposed principal investigator (team leader and/or key personnel) are considered to be critical in achieving the objectives of the proposal;

(vi) The offeror possesses and offers capabilities, related experience and facilities (or techniques, or unique combinations thereof) which are considered to be integral factors for achieving the objectives of the proposal. It further appears that the substance of the proposal is not readily available to the Government without restriction from another source, does not closely resemble that of a pending competitive solicitation, and is sufficiently unique to justify acceptance. Based upon a comprehensive evaluation and the foregoing reason(s), I accept this proposal submitted by the anticipated principal investigator, (Full Name), for implementation as a (Name of Program) Project. I am assigning this project to (Installation) for implementation and request that an appropriate instrument be executed with the institution.

(c) *Solicited proposals.* As a result of the instrument selection criteria specified by Pub. L. 95-224, and NASA's implementation in § 1260.301, the award of a grant or cooperative agreement based on a solicited proposal may be appropriate.

(d) Grants and cooperative agreements based on solicited proposals are most likely to result from proposals submitted in response to "Announcements of Opportunity." This type of solicitation is governed by the terms of NASA Handbook 8030.6, "Guidelines for Acquisition of Investigations."

§ 1260.203 Criteria for selection of award instrument.

(a) *General.* (1) This § 1260.203 provides guidance on the appropriate choice of award instruments consistent with the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224 and Office of Management and Budget (OMB) implementation of that Act. This § 1260.203 applies to all program and individual transactions where the choice of award isntruments is within the administrative discretion of NASA and is not otherwise prescribed or limited by law. A variety of award instruments is available as the means for defining the terms and conditions, and the nature of the relationship between NASA and eligible recipients. The award instruments are intended to be different in purpose, application, content and nature. When properly employed, they create different relationships betwen the parties.

Because of these differences, the decision to use a particular instrument to implement a particular purpose must be made deliberately.

(2) *Procurement contracts.* A procurement contract shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever (i) the principal purpose of the instrument is the acquisition by purchase, lease or barter, of property, or services for the direct benefit or use of the Federal Government; or (ii) whenever NASA determines in a specific instance that the use of a type of procurement contract is appropriate.

(3) *Grants.* A grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than by acquisition, purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between NASA acting for the Federal Government and the recipient during performance of the contemplated activity.

(4) *Cooperative agreements.* A cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property, or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between NASA, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(b) *Factors to consider in the selection of award instrument.* The cognizant technical officer shall recommend to the contracting officer of the funding installation the selection of the research support instrument (grant, cooperative agreement or contract) regardless of the type of proposal involved, taking into account statutory requirements, NASA policies for dealing with universities, the nature of the proposed research, the manner in which it will be performed, and the nature and extent of interaction between NASA and the performer. Research grants and cooperative agreements with nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research may be made only to support basic scientific research. Any exceptions must have the prior approval of the Director of Procurement. As a matter of policy NASA does not generally award grants for donative assistance purposes, but only to meet program objectives; hence, consideration of any potential benefit accruing to the recipient is extraneous to determination of the support instrument. Since prime responsibility for the pursuit of most basic studies is with the university researcher, it is anticipated that the use of cooperative agreements will be limited to those situations where the project would not be possible without extensive NASA-university collaboration. Thus, cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA center (or a NASA investigator works at the university), or when the NASA-university scientific collaboration is such that a jointly authored report is appropriate. Under no circumstances are cooperative agreements to be used solely to obtain the stricter control requirements typical of a contract. Subject to the statutory requirements set forth in § 1260.203(a) of this part, the characteristics generally inherent in grants, cooperative agreements and contracts are as follows:

(1) Characteristics of a grant instrument:

(i) The principal purpose is to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study;

(ii) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified;

(iii) NASA desires, or the nature of the proposed investigation is such, that the grantee will bear prime responsibility for the conduct of the research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the related resources provided;

(iv) The research problem is such that long term support (i.e., in excess of 1 year) is required for the study to mature to maximum scientific effectiveness (however, this does not preclude shorter-term grants in special cases);

(v) Meaningful technical reports (as distinguished from the Semiannual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule;

(vi) Simplicity and economy in execution and administration are mutually desirable; and

(2) Characteristics inherent in a cooperative agreement include the characteristics of a grant plus the following:

(i) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment;

(ii) The project, conducted as proposed, would not be possible without extensive NASA-university technical collaboration; and

(iii) The nature of the collaboration can be clearly defined and specified in advance.

(3) Characteristics inherent in a contract are as follows:

(i) The principal purpose is the purchase for the direct use or benefit of NASA's well-defined, specific effort clearly required for the advancement of a programmed NASA mission or project;

(ii) The work to be conducted is directed closely toward the solution of a specific problem;

(iii) A specific service, piece of hardware, or improved performance of a specific device is the end product;

(iv) NASA considers it necessary, and it is reasonable in consideration of the nature of the project, to exercise control over the objectives, direction, specifications, costs or methods of the research, and schedule control is desirable and feasible;

(v) The work to be conducted is classified (however, access to security classified information may be given grantees where a demonstrated need exists);

(vi) The end result is clearly defined and/or parameters and specifications are prepared in advance of the work; and

(vii) A significant portion of the total effort will be performed by an organization other than the one submitting the proposal, and such portion will involve the development, fabrication or acquisition of instruments or hardware.

(c) Other instruments authorized by statute shall be used only after it has been determined, with the advise of general counsel, that the action cannot be accomplished under a grant, cooperative agreement, or contract, as described in this section. Use of purchase orders (NASA Form 1379) for research is subject to the limitations of 41 CFR, Ch. 18, 3.603(a) and 3.608-2(b)(1).

§ 1260.204 Processing the instruments.

(a) If a grant or cooperative agreement is selected as the research support instrument, negotiation will be by the funding installation, except for grants to foreign institutions subject to NASA Procurement Directive 1362.1.

(b) Grants officers at field installations will furnish to the University Affairs Office copies of the technical evaluation and procurement request, identified by the proposal control number assigned by the University Affairs Office, at the time the negotiation is started. This requirement does not apply to (1) proposals for which a proposal control number is not assigned by the University Affairs Office, or (2) when a proposal evaluation (NASA Form 884 or an equivalent memorandum) and a copy of the procurement request have been forwarded to the University Affairs Office prior to the time the procurement package is received by the grants officer.

(c) Grants officers at field installations and the Headquarters Contracts and Grants Division will furnish to the University Affairs Office completed NASA Forms 1356, "C.A.S.E. Report on College and University Projects," after all awards, regardless of any exceptions in paragraphs (a) and (b) of this section (see § 1260.602).

§ 1260.205 Civil Rights Act of 1964—Nondiscrimination in certain federally funded programs.

(a) Section 602 of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 200d-1), provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance, and requires that each Government agency which is empowered to extend such financial assistance shall issue rules or regulations effectuating Title VI (Sections 601-605) of the Act with respect to such programs or activities administered by the agency. NASA's Civil Rights regulation was published as 14 CFR Part 1250 and incorporated into NASA's directives system as NASA Management Instruction 2090.1, "Civil Rights Act—Nondiscrimination in Federally-Assisted Programs of NASA." Section 602 of the Act applies nondiscrimination requirements to certain types of awards not covered by Executive Order 11246, as amended, which pertains primarily to contracts.

(b) For Civil Rights purposes, NASA has determined that research grants and cooperative agreements made under the authority of Pub. L. 95-224, are within the purview of Title VI of the Act, rather than within the purview of Executive Order 1246 and its predecessors.

(c) Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(d) Further implementation, setting forth procedures and guidance, and assigning responsibility to NASA officials, is contained in NASA Management Instruction 2090.1.

(e)(1) No grant shall be made unless and until an Assurance of Compliance With the National Aeronautics and Space Administration Regulation Under Title VI of the Civil Rights Act of 1964, NASA Form 1206 (Exhibit A of this part), has been obtained in accordance with the requirements of NASA Management Instruction 2090.1, or until proceedings pursuant to § 1250.107(c) of the NASA Civil Rights regulation have been conducted and terminated in favor of the prospective grantee. NASA shall not be obligated to provide support in such a case during the pendency of any administrative proceedings under the NASA Civil Rights regulation.

(2) If a proposal relating to a covered program does not contain or refer to a prescribed assurance and it does not appear that the offeror is aware of the requirement for the assurance, prior to making any grant, the offeror shall be furnished a copy of the desired form of assurance and shall be informed of the requirements of the NASA Civil Rights regulation and this § 1260.205.

§ 1260.206 Printing, binding, and duplicating.

Printing, binding and duplicating required by NASA shall be obtained in accordance with (a) the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States, and (b) NASA Management Instruction 1490.2, "Responsibilities, Procedures, and Standards for NASA Printing, Duplicating, and Binding." Technical proposals should be carefully reviewed to assure that unauthorized printing, binding, or volume duplicating constituting printing are not included in grants. When a proposed grant may involve printing, binding, or duplicating, close coordination will be effected with the Installation Central Printing Management Officer in the review process to ensure compliance with these regulations.

1260.207 Procurement of helium.

(a) NASA is required under the provisions of Pub. L. 86-777 (50 U.S.C. 167a *et seq.*) to obtain its major requirements for helium from the Secretary of the Interior.

(b) When it is known that the performance of a grant or cooperative agreement will necessitate the purchase of helium by the grantee, the following clause shall be included in the grant:

PROCUREMENT OF HELIUM (JANUARY 1981)

(a) The Grantee shall obtain its requirements for helium under this grant from the Department of the Interior (Bureau of Mines) or from a commercial supplier qualified by the Bureau of Mines and included in the Bureau of Mines publication, "List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies." Copies of this publication may be obtained from the Bureau of Mines, Helium Operations, P.O. Box H4372, Herring Plaza, Amarillo, Texas 79101.

(b) The Grantee's procurement documents for the commercial procurement of helium shall be annotated. Pursuant to 30 CFR Parts 1 and 2, helium furnished under this contract (purchase order) shall be Bureau of Mines helium, or shall be replaced by the supplier with an equivalent volume of helium purchased from the Bureau of Mines.

(c) A copy of each contract or purchase order for the supply of helium from commercial sources shall be forwarded to the Bureau of Mines, Helium Operations, Box H4372, Herring Plaza, Amarillo, Texas, 79101. These copies shall be further identified by the applicable NASA grant number.

§ 1260.208 Clean Air and Federal Water Pollution Control Acts.

(a) Pursuant to regulations issued by authority of E.O. 11738 by the Environmental Protection Agency (EPA) and published in 40 CFR Part 15, no grant or subgrant or subcontract thereunder in excess of $100,000 shall be awarded, renewed, or extended, except as provided in paragraph (c) of this section, if any facility to be utilized thereunder or in the performance thereof is listed on the EPA "List of Violating Facilities," published pursuant to 40 CFR 15.20, the Clean Air Act, as amended, (42 U.S.C. 1857 *et seq.*, as amended by Pub. L. 91-604), and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500). This list will be distributed periodically by EPA to all Federal agencies and published in the FEDERAL REGISTER.

(b) Special condition, § 1260.420(b)(7), shall be used with each grant or grant extension in excess of $100,000.

(c) When the Administrator determines that the paramount interest of the United States so requires, the Administrator may exempt for a period not to exceed 1 year any individual grant, or any subgrant or subcontract thereunder, from the requirements of this § 1260.208, and, by rule or regulation following consultation with the Administrator of the EPA, any class of grants or subgrants or subcontracts thereunder. The Administrator shall promptly notify the Administrator of the EPA of any of the exemptions authorized by the foregoing, and the justification therefor, which shall fully describe the purpose of the grant, subgrant, or subcontract and indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(d) Requests for exemptions or renewals thereof shall be made to the Director of Procurement (Code HP-1), NASA Headquarters. Requests for individual exemptions shall list the recipient and the amount of the proposed grant, subgrant or subcontract and the title and name of the principal investigator (where applicable). All requests, whether for individual or class exemptions, shall provide a complete justification as required in paragraph (c) of this section.

§ 1260.209 Patent rights in inventions.

(a) Pub. L. 96-517 (35 U.S.C. 200 et seq.) governs the disposition of rights in inventions made by small business firms and nonprofit organizations under contracts, grants and cooperative agreements for the performance of experimental, developmental, or research work funded in whole or in part by Federal agencies. This Act takes precedence over any other Acts, including section 305 of the National Aeronautics and Space Act of 1958, regarding the disposition of rights to such inventions. It takes effect on July 1, 1981, and is applicable to all contracts, grants and cooperative agreements (including subcontracts) with small business firms and nonprofit organizations executed on or after that date. As to inventions "made" on or after July 1, 1981, in the performance of work under any such contracts, grants or cooperative agreements (including subcontracts) executed prior to July 1, 1981, § 1245.113 of the NASA Patent Waiver Regulation of July 1, 1981 (14 CFR 1245.1) may be applied.

(b) The implementation of Pub. L. 96-517 in the NASA Procurement Regulation, 41 CFR, Ch. 18, 9.1), shall apply equally to all grants and cooperative agreements (including subcontracts thereunder) with a small business firm or nonprofit institution for experimental, developmental or research work to be performed in the United States, awarded and administered under the Grant and Cooperative Agreement Handbook, unless a deviation from such use is approved pursuant to § 1260.106. The clause implementing Pub. L. 96-517 for grants and cooperative agreements is set forth in Exhibit G of this part. Where a deviation is approved or where experimental, developmental or research work is to be performed outside the United States, patent counsel should be consulted for the appropriate provisions to be included in the grant or cooperative agreement.

(c) Reports required pursuant to § 1260.409(b) shall be submitted upon receipt by the grants officer to the local patent counsel.

Subpart 3—Award of Grants and Cooperative Agreements

§ 1260.301 Instruments.

(a) The grant or cooperative agreement instrument shall be brief in format, containing only those provisions necessary to protect the fundamental interests of the Government. To ease compliance problems within universities and nonprofit institutions, grants issued by all NASA installations are identical in format and printed content and changes in grant requirements are made as infrequently as possible.

(b) In order to maintain the distinction between transactions entered into pursuant to section 203(c)(5) and other provisions of the Space Act of 1958 (such as patent licenses, out-bailments, reimbursable launch agreements, and international agreements) and cooperative agreements entered into pursuant to Pub. L. 95-224, (effective February 3, 1979) the term "cooperative agreement" shall not be used to designate those agreements entered into under the Space Act but shall be used only to designate those cooperative agreements entered into pursuant to Pub. L. 95-224. Loans of Government personal property not associated with a contract, grant, or cooperative agreement under Pub. L. 95-224, and made under the Space Act of 1958, should be consummated as loan agreements under paragraph 1.211 and Part 3.400 of NASA Handbook 4200.1, "Equipment Management Manual."

(c) An initial determination shall be made by the technical office sponsoring the requirement whether the principal purpose involved is the acquisition of property or services for the direct benefit or use of the Federal Government. If the determination is affirmative, it shall be set forth in the "Justification for Acceptance of Unsolicited Proposal" (41 CFR, Ch. 18, 910(b)) or the procurement request and, upon concurrence of the contracting officer, a contract shall be used pursuant to the NASA Procurement Regulation.

(d) If it is determined that the principal purpose of a research task is not the acquisition of property or services for the direct benefit or use of the Federal Government, but rather is to accomplish a public purpose of support or stimulation by increasing basic knowledge and understanding in aeronautics or space, a grant (where no substantial Federal involvement is anticipated) or a cooperative agreement (where substantial Federal involvement is anticipated) shall be used. (See § 1260.203 for guidance.)

(e) Where the technical office sponsoring the research recommends that a grant or cooperative agreement be used as the research instrument supporting an unsolicited proposal, the "Recommendation for Acceptance of Unsolicited Proposal" shall contain justification for such recommendation under the guidance set forth in § 1260.301(d). The required justification shall be in reasonable detail, shall adequately support the recommendation to award either a grant or cooperative agreement, and shall be approved by a responsible official designated for this purpose by the head of the program office concerned at Headquarters or field installation. In those instances where the transaction does not arise from an unsolicited proposal, the technical office involved shall, in the procurement request, justify any recommendation to the grants officer for award of a grant or cooperative agreement, subject to the approval required above.

(f) The grants officer shall review the recommendations of the cognizant technical office and, upon concurrence therein, shall prepare and sign a statement prior to the award of each grant or cooperative agreement, which justifies the use of such instrument under Pub. L. 95-224. The statement shall be placed in the offical file maintained for the transaction. General counsel should be consulted on questions of unique requirements and where additional assistance is otherwise determined to be necessary.

(g) Grants and cooperative agreements subject to Pub. L. 95-224, shall cite sections 5 or 6, as applicable, of the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224) as the authority for their placement. Contracts shall cite the applicable authority contained in 41 CFR, Ch. 18, 3.2.

(h) *Exception and deviations.* (1) Subsection 4(2) of Pub. L. 95-224 allows the use of contracts "whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate." This provision accommodates situations in which an agency determines that specific public needs can be satisfied best using the procurement process. However, because the provision, if misused, could allow agencies to circumvent the criteria for use of procurement or assistance instruments, use of this authority is restricted to extraordinary circumstances, and only with prior approval of the Director of Procurement. (Deviations from policies and procedures shall be processed under 41 CFR, Ch. 18, 1.109 or § 1260.106, as appropriate.)

(2) It is NASA's policy that nonmonetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost time extensions).

§ 1260.302 Format.

NASA Form 1463, "Research Grant Award" Exhibit B, NASA Form 1562, "Cooperative Agreement" Exhibit C, and NASA Form 1463A, "Provisions for Research Grants and Cooperative Agreements" Exhibit D, shall be used for the award of all NASA research grants and cooperative agreements pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224).

§ 1260.303 Allowable costs.

(a) Regulations governing procurement contracts generally are not appropriate for application to grants and cooperative agreements. However, in general, Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-122, "Cost Principles for Nonprofit Organizations," OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations," and 41 CFR, Ch. 18.3 are the basic guidance documents in determining the allowability of costs chargeable to research supported by NASA under grants and cooperative agreements.

(b) NASA normally allows full recovery of indirect expenses but in no case shall an overhead rate used for determining grant or cooperative agreement amounts exceed, in equivalence, the most recent overhead rate at the recipient institution for comparable research contracts of the Government.

(c) Grant amounts determined at the time of the award shall not be reduced other than in case of revocation or in the event grant funds are not committed by the grantee prior to completion of the research involved.

(d) It is the responsibility of the recipient to manage the granted funds in such a manner that they cover the full period of the grant or cooperative agreement. NASA Is not obligated to reimburse over-expenditures. However, this stricture does not preclude acceptance of a proposal requesting supplemental funding to extend the research.

§ 1260.304 Cost sharing.

(a)(1) *General.* In implementing the statutory requirement appearing in various NASA Appropriations Acts, for cost sharing of research resulting from unsolicited proposals, NASA has, in the past, generally required that educational institutions share in the cost of such research. This requirement was derived from the understanding that there was generally extant a "mutuality of interest" (as that phrase appears in the statutes) in such relationships thereby bringing into play the cost-sharing requirement.

(2) Subsequent to Congressional concern on overly strict application of the cost sharing requirement, a NASA reevaluation resulted in a determination that the activities of educational institutions under NASA research grants, cooperative agreements and contracts do not generally produce benefits that can be measured as having significance apart from the benefit intrinsic in the conducting of research for NASA. Therefore, in such instances, these agreements should not be subject to the cost-sharing requirement.

(3) No individual documentation or justification is required to establish agreements with educational and nonprofit institutions not subject to a cost sharing requirement. Documentation, however, is necessary in those instances where cost sharing is appropriate.

(4) If in an individual case, cost-sharing is determined to be applicable pursuant to the NASA policy set forth in 41 CFR, Ch. 18, 1.362, the procedures in 41 CFR, Ch. 18, § 1.362 shall be followed and the special condition clause for cost sharing set forth in paragraph (b) of this section shall be used.

(b) *Clause.* In grants and cooperative agreements to which cost sharing is applicable, the following clause shall be used.

COST SHARING (JANUARY 1981)

The Grantee agrees to share in the cost of the research by charging to the Government not more than   percent of the costs of performance determined to be allowable in accordance with paragraph 405 of the NASA Grant and Cooperative Agreement Handbook. The remaining   percent, or more, of the allowable costs of performance so determined will constitute the Grantee's share and will not be charged to the Government under this grant or under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). The Grantee will maintain records of all grant costs claimed by the Grantee as constituting part of its share and such records shall be subject to audit by the Government.

§ 1260.305 Long term stability.

(a) *General.* Research performed for NASA by universities tends to be long term. Encouraging stability permits confidence in advance planning for the most effective use of resources. Two methods for achieving long term stability, i.e., continuing awards and step funding, are set forth in §§ 1260.305-2 and 1260.305-3.

(b) *Continuing awards*—(1) *Definition.* A continuing award is a grant or cooperative agreement for which NASA obligates funds to support an effort for a 1-year period, and states an intention to support approximate levels of effort for an additional period of time provided funds are available and the results achieved warrant further support within the context of agency programs.

(2) *Duration and funding.* Continuing awards will normally be approved by the relevant Headquarters program office or center for periods not in excess of 3 years. Legal, along with concomitant fiscal obligations, however, will be entered into for periods of 1 year. The award instrument will contain the following special condition which provides an estimate of an approximate level of funding for each of the following years:

> This is a continuing award. Contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:
>
> Second year $—— Third year $——
>
> It is the responsibility of the awardee to request such continued support by submitting a brief proposal, according to NASA procedures for unsolicited proposals.

(*The phrase "Third year" will be omitted if inapplicable.*) The above special condition is not to be used in multiple-year, including step-funded, awards.

(3) *Proposals and review.* The original proposal and its scientific evaluation is applicable to the entire period. Thus, neither an extensive new proposal nor new reviews is required for subsequent funding in the approved period, unless a special need for new reviews is indicated by monitoring of the project and of its reports, by major changes in the project or senior investigators, by the introduction of work outside the scope of the approved proposal, or by the need for substantial additional funding than that initially anticipated.

(4) *Requests for continued support.* Five copies of a brief renewal proposal are required, as described in the special conditions of the award instrument for additional funding. Investigators shall be encouraged to contact the NASA technical officer for the project prior to proposal preparation to determine the amount of information required. An additional extended period may be proposed, upon the expiration of the approved period. A complete, new proposal, subject to full review, must be submitted for this purpose. If otherwise acceptable, NASA, at its option, may fund the proposal through a further continuing award or by a standard year-to-year agreement, if long-term effort is no longer anticipated.

(5) *Levels of continued support.* Normally, each year of a continuing award will be funded at the approximate level indicated in the original award instrument, subject to satisfactory scientific progress, availability of funds, and continued relevance to NASA programs. This is not, however, a binding commitment as changing NASA program constraints and developments within the project itself may dictate adjustments in the originally anticipated level.

(6) *Programmatic procedures.* Procurement request initiators who desire to use the continuing award technique should include in their procurement justification packages a brief statement requesting the use of the continuing award, including the expected levels for future periods.

(7) *Other conditions.* Except as noted in this part, all regulations, terms and guidelines applicable to regular grants and cooperative agreements apply to continuing awards.

(c) *Step funding*—(1) *Description of step funding.* A step funded research project is one for which funds are obligated over a 3-year period. In addition to full support for the first year's effort, funds are also obligated for a second year's operation at approximately two-thirds of the first year level, and for third year's effort at approximately one-third of the first year level. The typical funding schedule anticipates a continuation of the initially established levels in subsequent years, but this is not always the case—planned increases or decreases in level may be projected in advance. In any event, the full amount required to establish the desired steps must be obligated. (See Step Funding Illustration—Exhibit E.)

(2) *Procedures.* The documentation will clearly indicate that the step funding is appropriate and provide a suggested step schedule accommodating both the previously obligated and the new funding. Annual levels should be rounded to the nearest $1,000, where feasible. Annual continuation proposals should project the contemplated effort for 3 years in advance. Wherever possible, renewal or notification to the grantee that further support will not be forthcoming will be issued before the authorized level drops to the next lower step. Normally, step funded grants should not be allowed to expire if the total period of performance is less than 5 years. Except in cases of revocation, funds should not be de-obligated from the steps. Do not make "No Cost-time Extensions" to step-funded awards, except when they are in the last year

and no additional obligations are planned. Annual funding dates may be changed, if necessary, by appropriately rescheduling the steps. The award instrument shall contain the special condition for step funding (see § 1260.420 (b)(5)).

§ 1260.306 Numbering of instruments.

(a) *Grants.* (1) The identification numbering system for all research grants shall conform to 41 CFR, Ch. 18, 20.203-3, except that an NAG prefix shall be used in lieu of the NAS prefix.

(2) The prefix designation shall include the Center Identification Number; e.g., NAGW would be the Headquarters prefix designation and NAG5 would be the Goddard prefix designation. Grants will be sequentially numbered beginning with "1."

(3) This numbering system applies to all new research grants awarded beginning in Fiscal Year 1980. Existing grants identified with prefixes NGR and NGF will not be changed. Sequential numbers are controlled by the NASA University Affairs Office.

(b) *Cooperative agreements.* The numbering system for cooperative agreements shall be the same as for paragraphs (a) and (b) of § 1260.306-1, except that NCC (for centers) and NCCW (for Headquarters) prefixes shall be used in lieu of the NAG and NAGW prefixes.

§ 1260.307 Distribution of grants, cooperative agreements, and grant supplements.

(a) Distribution of grants, cooperative agreements and grant supplements shall be made by the initiating office in accordance with its requirements, except that in all cases:

(b) At least one copy will be furnished to paying offices in order to support the payment file and shall be retained for audit purposes in accordance with § 1260.308.

(c) One copy, plus a copy of the grantee's proposal, will be furnished to the Scientific and Technical Information Office, Code NST-10, NASA Headquarters.

§ 1260.308 Retention of documents for on-site audit.

NASA's grants, cooperative agreements and grant supplements designated in § 1260.307 are subject to on-site audit by the General Accounting Office. The original or a signed copy of each document, with supporting data, shall be retained by the installation to be available to the General Accounting Office for audit purposes. Records shall be retained for 3 years after completion.

Subpart 4—Research Grant and Cooperative Agreement Provisions

§ 1260.400 General.

The provisions set forth in this subpart shall be inserted in and made a part of all NASA grants and cooperative agreements subject to this part. Whenever the words "grant" or "grantee" appear in these provisions, they shall be deemed to include, as appropriate, the words "cooperative agreement" and "recipient of cooperative agreement" respectively.

§ 1260.401 Technical reports and publications.

TECHNICAL REPORTS AND PUBLICATIONS
(JANUARY 1981)

(a) All measurement values employed in technical reports prepared under this Grant shall be expressed in the International System of Units (SI). Expression in both SI units and customary units is acceptable where the use of SI units alone would obviously impair communications or reduce the usefulness of the report to the primary recipients. When both systems of units are used, SI units are to be stated first and customary units afterwards in parentheses. In each such case, the report shall state which system of units was used for the principal measurements and calculations.

(b) Publication to accomplish widest practicable and appropriate dissemination of research results is encouraged at any time during the course of the investigation. Examples of appropriate media for such dissemination are the learned journals, the proceedings of professional groups, conference presentations, and NASA scientific and technical publications. NASA Grantees may submit the results of their work for publication by whichever media they feel most appropriate. Publications and reports prepared under a Grant shall contain a statement which acknowledges NASA's support and identifies the grant by number. Submissions for NASA scientific and technical publications shall be accompained by manuscripts provided initially in draft. Upon agency review and approval, a reproducible copy shall be submitted in the style and format specified by NASA.

(c) Copies of preprints or manuscripts of each publication shall be provided to NASA for information at the time of submission for publication. Prior approval for publication is not required unless security classification is involved or the Grant contains special conditions pertinent to publication of results. Should the preprint or manuscript contain a description of a "subject invention," such invention is to be disclosed to NASA as required by the "Patent Rights (Small Business Firm or Nonprofit Organization)" clause set forth as Exhibit G of the NASA Grant and Cooperative Agreement Handbook.

(d) Brief, informal Semiannual Status Reports, which shall include concise statements of the research accomplished during the report period, including full bibliographic references to, or abstracts of, publications, shall be submitted. This is a minimum reporting requirement and Grantees are urged to submit interim reports, to publish in the open literature, or to present conference papers whenever the research has reached a point where it is logical to summarize the results, a research phase has been completed, or significant new findings are made.

(e) A final technical report will be submitted upon termination of support under a specific Grant, whether or not support is continued under another Grant number. The final report may be a comprehensive report of all research findings, suitable for printing as a permanent contribution to knowledge, or it may be a brief summary of the entire project. In either case, cumulated bibliographic references to, or abstracts of, all publications issued during the course of the research shall be included.

(f) Status and final technical reports shall have a title page that displays the title of the Grant, the type of report, the name of the Principal Investigator, the period covered by the report, the name and address of the Grantee's institution, and the Grant number.

(g) Five copies of all preprints, reprints, manuscripts, status and interim reports, and the final technical report shall be submitted to NASA. Three of these copies shall be sent to the NASA Technical Office designated on the cover page of the Grant. The remaining two copies, one of which shall be of a quality suitable for microreproduction, shall be sent to:

NASA Scientific & Technical Information Facility, P.O. Box 8757, Baltimore/Washington International Airport, Maryland 21240

§ 1260.402 Extensions.

EXTENSIONS (JANUARY 1981)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research, and Grants may be extended for additional periods of time. Any extension requiring additional funding must be supported by an unsolicited proposal submitted at least 4 months in advance of the expiration date of the Grant. The period of performance shown in the Grant documents is approximate, but extension for more than 30 days must be requested by application to the Grants Officer and approved in writing.

(b) When a Grant is a continuing award or step funded, NASA will, if circumstances permit, make available additional funding to extend the period. The step funding is based on unsolicited proposals received prior to the completion of each year of full support. NASA shall be the sole judge of whether circumstances will permit this increase. This statement of policy should not be taken as a commitment by NASA.

§ 1260.403 Revocation.

REVOCATION (JANUARY 1981)

It is a condition of each Grant that it may be revoked in whole or in part by NASA after consultation with the Grantee. In the event of revocation, the Grantee shall refund to NASA any unexpended funds that it has received under the Grant, except such portion thereof as may be required by the Grantee to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate.

§ 1260.404 Travel.

TRAVEL (MARCH 1981)

(a) Domestic travel is an appropriate charge to research Grants and NASA authorization for specific trips is not required. Expenditures for domestic travel shall not exceed $500 or 125% of the amount allotted for such travel in the approved proposal budget, whichever is greater, without the prior authorization of the NASA Grants Officer.

(b) Foreign Travel (all travel outside the 50 United States, the District of Columbia, Puerto Rico, Possessions of the United States and the areas in the Republic of Panama made available to the United States and Canada) must be clearly essential to the research effort and must, to be charged to a Grant, have the prior approval of the NASA Grants Officer regardless of its inclusion in the approved proposal budget. NMI 9720.5, "Foreign Travel Costs Charged to Grants, Contracts, and Other Agreements with Colleges and Universities," sets forth policy and responsibilities governing NASA approval of foreign travel by university personnel when the costs of such travel are chargeable to NASA Contracts, Grants or Cooperative Agreements. In addition, approval of international travel including Canada is dependent upon adherence to the guidelines in Section 5 of the International Air Transportation Act of 1974, which requires use of certificated air carriers if such service is available.

§ 1260.405 Allowable costs.

(a) *General guidance.*

GENERAL GUIDANCE (JANUARY 1981)

OMB Circular A-21, "Cost Principles for Educational Institutions," and OMB Circular A-122, "Cost Principles for Nonprofit Organizations," OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations," and NASA Procurement Regulation (NPR) Part 15, Subpart 3, (41 CFR Ch. 18), are the general guidance documents in determining the allowability of costs chargeable to research sponsored by NASA under Grants and Cooperative Agreements.

(b) *Consultant services.*

CONSULTANT SERVICES (JANUARY 1981)

Payments to individuals for consultant services under a NASA Grant or Cooperative Agreement shall not exceed the daily equivalent of the maximum rate paid to a GS-18 Federal employee (exclusive of indirect cost, travel, per diem, clerical services, vacation, fringe benefits, and supplies).

§ 1260.406 Accounting records.

ACCOUNTING RECORDS (JANUARY 1981)

(a) The Grantee shall maintain books and accounting records, in accordance with the principles set forth in the documents listed in paragraph 405 of the NASA Grant and Cooperative Agreement Handbook in a manner sufficient to reflect properly all direct and indirect costs incurred or anticipated as a result of commitments made during the period of the grant. Microfilm records are acceptable.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to this Grant shall be retained for a period of 3 years, except that:

(1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and

(2) Records for nonexpendable property acquired with Grant funds shall be retained for 3 years after its final disposition.

(c) The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF 272).

(d) The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Grantee and to subrecipients to make audits, examinations, excerpts and transcripts.

(e) All of the foregoing provisions shall apply to any subrecipient performing substantive work under this Grant.

§ 1260.407 Payment.

PAYMENT (JANUARY 1981)

Advance payments by the Letter-of-Credit or Direct Treasury Check method will be made in accordance with procedures set forth in Exhibit F of the NASA Grant and Cooperative Agreement Handbook.

§ 1260.408 Equipment and other property.

EQUIPMENT AND OTHER PROPERTY (MARCH 1981)

(a) NASA research grants permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $1,000 and not included in the approved proposal budget requires the prior approval of the NASA Grants Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) NASA Grant funds shall not be used to purchase items such as furniture, furnishings, office equipment or other items of a nontechnical nature; exceptions to this require approval of the NASA Grants Officer and must be fully justified as essential to the research under the Grant. Under no circumstances shall Grant funds be used to acquire land or any interest therein, to acquire or construct facilities or to procure passenger carrying vehicles.

(c) Title to equipment purchased with Grant funds shall vest in the Grantee unless otherwise provided. The Government reserves the right to require transfer to itself title to items purchased at a cost of $1,000 or more. Such reservation is subject to the conditions of paragraph 505 of the NASA Grant and Cooperative Agreement Handbook.

(d) Title to Government-furnished property (including equipment, title to which has been transferred to the Government pursuant to paragraph (c) of this section prior to completion of the work) will remain with the Government.

(e) Title to expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the Grant or other agreement, and the property is not needed for any other Federally sponsored project or program, the recipient shall retain the property for use on non-Federally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with subparagraph 6c, Attachment N to OMB Circular A-110.

(f) The Grantee shall maintain property records and otherwise manage nonexpendable personal property utilized in the performance of this Grant in accordance with the provisions of Paragraph 509 of the NASA Grant and Cooperative Agreement Handbook. Grantees will submit annually an inventory listing of Government owned property in their custody to the Grants Officer. Such listings will be as of June 30, will be submitted by July 31, and will reflect the record elements required in Paragraph 509(b)(1) and beginning and ending dollar value totals for the period. Upon completion of the agreement or when the property is no longer needed, the recipient shall notify the Grants Officer, who will provide disposition instructions. The Grants Officer will provide a copy of each annual inventory listing to the NASA installation Financial Management Office upon receipt.

§ 1260.409 Patent rights (small business firm or nonprofit organization).

PATENT RIGHTS (SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION) (JULY 1981)

(a) The disposition of rights to inventions made in the performance of work under this Grant will be made in accordance with the Pub. L. 96-517 (94 Stat. 3019, 35 U.S.C. 200 et seq.) and NASA's implementing regulations as set forth in the NASA Procurement Regulation, Part 9, Subpart 1, paragraphs 9.108 and 9.109 (41 CFR Ch. 18). The provision (clause) required by NASA PR 9.108-5, entitled "Patent Rights (Small Business Firm or Nonprofit Organization)" is set forth as Exhibit G of the NASA Grant and Cooperative Agreement Handbook, and is hereby made applicable to this Grant. The Grantee shall include an appropriate patent rights provision in accordance with paragraph (g) of Exhibit G in all subcontracts.

(b) All disclosures of Subject Inventions, election of rights utilization reports, and other reports required by the aforementioned "Patent Rights (Small Business Firm or Nonprofit Organization)" clause shall be submitted to the Grants Officer.

§ 1260.410 Rights in data.

RIGHTS IN DATA (JANUARY 1981)

The Grantee grants to the Government, for Governmental purposes, the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this Grant.

§ 1260.411 Security.

SECURITY (JANUARY 1981)

Normally, NASA research Grants do not involve classified defense information. However, if information is sought or developed by the Grantee that should be classified in the interests of national security, the NASA Grants Officer that issued the Grant shall be notified immediately.

§ 1260.412 Civil rights.

CIVIL RIGHTS (JANUARY 1981)

Work on NASA Grants is subject to the provisions of the Civil Rights Act of 1964, and the NASA implementing regulations (14 CFR Part 1250).

§ 1260.413 Safety.

SAFETY (JANUARY 1981)

(a) The Grantee shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this Grant. The grantee shall comply with all applicable Federal, State, and local laws relating to safety. The Grantee shall maintain a record of, and will notify the NASA Grants Officer of any accident involving death, disabling injury or substantial loss of property. The Grantee will advise NASA of hazards that come to its attention as a result of the work under the Grant through routine status reports furnished in compliance with the Grant.

(b) Where the work under this Grant involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Grantee. Compliance with the provisions of this clause by subcontractors shall be the responsibility of the Grantee.

§ 1260.414 Subcontracts.

SUBCONTRACTS (JANUARY 1981)

Approval of subcontracts for the purchase of property or equipment under this grant shall be obtained in accordance with the provision herein entitled "Equipment and Other Property." All other subcontracts not provided for in the approved proposal budget require the prior consent of the Grants Officer.

§ 1260.415 Changes in principal investigator or technical objectives.

CHANGES IN PRINCIPAL INVESTIGATOR OR TECHNICAL OBJECTIVES (JANUARY 1981)

(a) The Grantee shall be permitted to change the methods and procedures employed in performing the research without the need to make special reports on proposed actions or obtain NASA approval. Significant changes in methods or procedures shall be reported to NASA in status reports and final technical reports. However, in the event the methodology or experiment is proposed as a specific stated objective of the research work, this shall be reflected in the Grant title.

(b) The stated objectives of the research effort shall not be changed, except with the approval of the NASA Grants Officer.

(c) The phenomenon or phenomena under study, i.e., the broad category of reseach, shall not be changed except with the prior approval of the NASA Grant Officer.

(d) The Grantee shall obtain the approval of the NASA Grants Officer to change the principal investigator, or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator.

(e) The Grantee shall consult with the NASA Grants Officer if the Principal Investigator becomes aware that he or she will devote substantially less effort to the work than anticipated in the approved proposal. If NASA determines that the reduction of effort would be so substantial as to impair the successful prosecution of the research, it may request a change of Principal Investigator or other appropriate modification of the Grant, or may revoke the Grant as provided herein.

(f) In projects which involve co-principal investigators or otherwise include more than one key person who may be considered essential to the conduct of the proposed research project, the foregoing provisions similarly apply to each key person. In such event, the Grant instrument shall identify the individual(s) to whom the provisions apply.

(g) In accordance with the Small Business Act Amendments, Pub. L. 95-507, small and disadvantaged firms shall be utilized as subcontractors to Grantees to the maximum extent.

§ 1260.416 Communications.

COMMUNICATIONS (JANUARY 1981)

The Principal Investigator may expect to be contacted by the NASA Technical Officer named on the cover page of the Grant in connection with the research aspects of the work under the Grant. Inquiries regarding the research aspects of the Grant should be directed to the NASA Technical Officer. However, written or oral communications of an administrative nature, such as approval of foreign travel, property matters, extension of the term of the Grant, etc., shall be channeled through the Grantee's business office to the Grants Officer.

§ 1260.417 Financial management system.

FINANCIAL MANAGEMENT SYSTEM (JANUARY 1981)

The Grantee's financial management system shall meet the standards set forth in paragraph 511 of the NASA Grant and Cooperative Agreement Handbook.

§ 1260.418 Procurement standards.

PROCUREMENT STANDARDS (JANUARY 1981)

The Grantee's procurement practices shall meet the standards set forth in paragraph 512 of the NASA Grant and Cooperative Agreement Handbook.

§ 1260.419 Additional provision for cooperative agreements.

With respect to cooperative agreements under Pub. L. 95-224, it has been determined that the NASA guidelines and regulations applicable to grants will apply to cooperative agreements. The Cooperative Agreements, NASA Form 1562 (see Exhibit C), shall contain a special provision stating the nature of the recipient/NASA interaction in accordance with Pub. L. 95-224. That special provision is as follows:

COOPERATIVE AGREEMENT SPECIAL PROVISION (JANUARY 1981)

(a) This award is a Cooperative Agreement as it is anticipated that there will be substantial NASA involvement during performance of the effort. That is, the recipient can expect NASA collaboration or participation in the management of the project.

(b) NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort. (Briefly state the nature of the cooperative interactions).

§ 1260.420 Special conditions.

(a) In addition to the general provisions set forth in this chapter, NASA grants and cooperative agreements are subject to various conditions which either are not applicable to all awards or are temporary in nature. Such conditions are not printed in NASA Form 1463A, "NASA Provisions for Research Grants and Cooperative Agreements" (Exhibit D), but are contained in a form, "Special Conditions," which is reproduced locally at individual NASA installations. In using the "Special Conditions" form, the grants officer indicates by check mark the specific clauses which are applicable to individual grants and fills in the blank sections of incomplete clauses as appropriate.

(b) All "Special conditions" forms shall contain the following heading and number clauses:

SPECIAL CONDITIONS

Grant No. .....

The special conditions checked below are applicable to this Award:

(1) *Federal Cash Transactions Report.* Pursuant to the clause, "Payment," of the NASA Provisions for Research Grants and Cooperative Agreements, the "Federal Cash Transactions Report," Standard Form 272, shall be submitted quarterly to:

(Installation)
(Address)
(City, State, Zip Code)
(Attn: ....)

(2) *Cash Payments.* An initial cash payment will be made in the amount of $................. Subsequent payments will be made in accordance with Exhibit F of the NASA Grant and Cooperative Agreement Handbook and the Grantee's requirements as reported on Standard Form 272.

(3) *Financing by Letter of Credit.* This grant does not provide for initial cash payment. Funds will be obtained by the Letter of Credit method of obtaining cash. No part of such funds shall be paid in advance to any secondary recipient without the express written approval of the Grants Officer. Cash drawdowns shall be initiated by the Grantee only when actually needed for the disbursements of the Grantee or of approved secondary recipients. Standard Form 272, "Federal Cash Transactions Report," covering cash disbursements and balances of the Grantee and any approved secondary recipients, shall be submitted by the Grantee in a timely manner as provided in the clause "Payment" of the NASA Provisions for Research Grants. The Grantee's financial management system shall provide for effective control over and accountability for all Federal funds. Continued financing by the Letter of Credit method is conditional upon all of the foregoing, and failure to comply with any of these requirements may cause the unobligated portion of the Letter of Credit to be revoked by NASA or the Department of the Treasury.

(4) *Stipulated Salary Support.* Pursuant to NPR Part 15, Subpart 3, salaries of professional staff and other professionals engaged in the work are stipulated as provided in the approved proposal budget. The Grantee agrees that stipulated amounts for any individual hereunder will not per se result in increasing his or her official salary from the Grantee institution.

(5) *Step Funding.* This is a step funded Grant. If the total amount allowed by the Schedule on the face of the Grant is not expended during the applicable period, the residual funds may be expended during the succeeding period. This carryover shall be brought to the attention of the Grants Officer when the Grantee submits its budget for the subsequent period.

(6) *Procurement of Helium.* (Insert the clause in Paragraph 207.)

(7) *Clean Air and Federal Water Pollution Control Acts.* The Grantee agrees to notify the Grants Officer promptly of the receipt, whether prior or subsequent to the Grantee's acceptance of this grant, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this Grant or any subgrant or subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of this Grant, the Grantee: (i) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance; (ii) agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Pub. L. 91-604) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Pub. L. 92-500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned Sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the grant; and (iii) agrees to include the criteria and requirements of this clause in every subgrant or subcontract hereunder in excess of $100,000, and to take such action as the Grants Officer may direct to enforce such criteria and requirements.

(8) *Continuing Award.* Insert the clause shown in paragraph 305.2(2) of the NASA Grant and Cooperative Agreement Handbook.

(c) All clauses inserted in "Special Conditions" forms shall be written out in full. Clauses shall not be incorporated by reference.

(d) Special conditions clauses which are not included in, or which differ in language from, the clauses in § 1260.420 shall be considered as deviations and processed in accordance with § 1260.106.

Subpart 5—Administration of Research Grants and Cooperative Agreements

§ 1260.501 General.

(a) NASA assumes that, once a grant or cooperative agreement is made, the principal investigator, operating within the policies of the grantee institution, is in the best position to determine the means by which the research may be conducted most effectively. The term "grantee" refers to recipients of both grants and cooperative agreements. NASA wishes to avoid any action that might diminish the responsibility of the grantee and the investigator for making sound scientific and administrative judgments. Grantees and investigators are encouraged to seek the advice and opinions of NASA on problems that may arise. Unless otherwise stated, the giving of such advice should not imply that the responsibility for final decisions has shifted to NASA. The primary concern of NASA is that granted funds be used in a manner that will make a maximum contribution to the scientific area under investigation. It is expected that grantees and investigators will also direct their efforts to this end.

(b) The grantee shall be permitted to change the methods and procedures employed in performing the research without the need to make special reports on proposed actions or obtain NASA approval. Significant changes in methods or procedures shall be reported to NASA in status reports and final technical reports. In the event the methodology or experiment is proposed as a specific stated objective of the research work, this shall be reflected in the grant title.

(c) The stated objectives of the research effort shall not be changed except with the approval of the NASA grants officer.

(d) The phenomenon or phenomena under study, i.e., the broad category of research, shall not be changed except with the prior aproval of the NASA grants officer.

(e) The grantee shall obtain the approval of the NASA grants officer to change the principal investigator, or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator.

(f) The grantee shall consult with the NASA grants officer if the principal investigator plans to, or becomes aware that he/she will, devote substantially less effort to the work than anticipated in the approved proposal. If NASA determines that the reduction of effort would be so substantial as to impair the successful prosecution of the research, it may request a change of principal investigator or other appropriate modification of the grant, or may revoke the grant as provided in § 1260.506.

(g) In projects which involve co-principal investigators or otherwise include more than one key person who may be considered essential to the conduct of the proposed research project, the provisions of paragraphs (e) and (f) of this section similarly apply to each such key person. In such event, the grant instrument shall identify the individual(s) to whom the provisions apply.

(h) It is NASA policy to make optimum use of the administration functions available from the Department of Defense (DOD) and other Government agencies. Property administration and plant clearance for grants and cooperative agreements will be delegated to the cognizant administering activity.

§ 1260.502 Instrument.

A NASA grant or cooperative agreement is consummated by an instrument signed by the NASA Administrator, or duly authorized representative and contains the provisions set forth in Subpart 1260.4 of this part.

§ 1260.503 Instrument period.

(a) Normally, NASA grants and cooperative agreements are made for periods up to 3 years. As stated in the instrument, the period is approximate; the beginning and ending dates are not specified with precision. The instrument period begins approximately on the date thereof and extends for approximately the length of time specified. However, when progress of research under the grant or cooperative agreement is delayed and circumstances make it necessary to request an extension of the period without additional funds, the policy of NASA is to permit extensions in time, upon written request.

(b) When it appears that the research contemplated will be completed within 30 days after the approximate ending date, a request for extension of the instrument period will be unnecessary. If it appears, however, that the additional time required for completion of the research will exceed 30 days, a request for extension must be made by the grantee. Any extension requiring additional funding must be supported by an unsolicited proposal and submitted at least 4 months in advance of the expiration date of the grant or cooperative agreement.

§ 1260.504 Adherence to original budget estimate.

(a) NASA believes that the principal investigator, operating within the established policies of the grantee, is the individual best qualified to determine the manner in which the grant or cooperative agreement funds may be used most effectively to accomplish the proposed research. Although NASA assumes no responsibility for overspent budgets, the investigator and the grantee institution are free to spend grant or cooperative agreements funds for the proposed research without strict adherence to individual allocations within total budgets, except as provided in §§ 1260.404 and 1260.408. Under no circumstances, however, may grant or cooperative agreements funds be used to acquire land or any interest therein, to acquire or construct facilities or to procure passenger carrying vehicles. Purchase of furniture, furnishings, office equipment or other items of a nontechnical natue require the prior approval of the NASA grants officer as provided in § 1260.408.

(b) Controls and limitations on expenditures for specific items under NASA grants or cooperative agreements shall be in accordance with the provisions of § 1260.405.

(c) If any of the actions requiring approval in accordance with § 1260.405 have received specific NASA approval during the proposal and award process, a further approval shall not be required. Whenever practical, the approvals shall be given at the time of the project award or extension to avoid any delays during the course of the project.

(d) Approval requirements relating to expenditures under grants and cooperative agreements, in addition to those provided for in § 1260.405 shall not be imposed except in accordance with the deviation procedure of § 1260.106 or as specifically required by statute.

§ 1260.505 Use, disposition and vesting of title to research equipment.

(a) *Background.* (1) Support of research in educational institutions provides substantial long-term and indirect benefits as well as the immediate research results. In addition to the obvious academic advantages of such support, individual and institutional capabilities to perform relevant research are enhanced, and the number of scientists and graduates with research interests in areas of concern to the nation generally, and to NASA in particular, is increased. Adequate modern research equipment in universities serves to maximize these direct and supplemental benefits.

(2) NASA funds research in academic areas in which the university has, and expects to maintain, a capacity for research and education. The research equipment that it acquires has, therefore, an especially high potential for continuing effective use at the acquiring institution. The legitimate interests of both NASA and the university, as well as the long-term national interest, require that any decision by the agency to take title for the purpose of transferring grantee equipment to an-

other location reflect careful consideration of all relevant factors. This should include comparison of the expected beneficial use at the present location which that expected at the new location, possible deleterious effects of removal, and the administrative and relocation costs involved.

(b) *Policy*. The following policies will be reflected, as appropriate, in the negotiation and the documentation of NASA research grants, cooperative agreements and supplements thereto and in related correspondence:

(1) Title to equipment purchased with grant and cooperative agreement funds vests in the grantee institution, and the equipment does not automatically follow the principal investigator when he or she leaves the institution. Title to Government-furnished equipment remains with the Government. When Government-furnished equipment is reported excess by a grantee, the grants officer will report the equipment to the installation property disposal officer for further NASA use. If NASA has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

(2) NASA may require transfer to it of title to individual items or coherent systems (paragraph (b)(8) of this section) of major grantee acquired equipment purchased at a cost of more than $1,000 subject to the following conditions:

(i) The equipment shall be appropriately identified to the recipient in writing.

(ii) NASA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If NASA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of subparagraphs 6b and 6c, Attachment N to OMB Circular A-110 as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for Federally-owned nonexpendable property discussed in § 1260.408(f).

(iv) When title is transferred to the Federal Government, the provisions of subparagraph 6c(2)(b), Attachment N to OMB Circular A-110 shall be followed.

(3) Title to minor equipment items (costing individually $1,000 or less) is not subject to transfer to the agency, except under the conditions of paragraph (b)(8) of this section.

(4) NASA procedure does not require a grantee to transfer title to grant or cooperative agreement-acquired equipment directly to another actual or potential grantee or contractor. Such transfers are accomplished by the Government taking title and issuing the equipment to the second institution as Government-furnished equipment.

(5) NASA normally will not recover equipment that a grantee desires to retain, for reissuance to another institution or to a NASA installation, unless it is specifically required for NASA work at the new location. Exceptions will be made only in highly unusual situations where title transfer is clearly in the best interest of the Government.

(6) Cost sharing by NASA and a grantee in the acquisition of individual items or coherent systems (paragraph (b)(8) of this section) of equipment, in response to a statutory requirement for cost-sharing of in any way that could result in joint ownership, shall normally be avoided.

(7) When cost sharing by NASA and a grantee in the acquisition of major equipment items or coherent systems cannot be avoided, and the NASA contribution will exceed $1,000, agreement regarding NASA retention of its option to take title and the conditions under which the option (if retained) will be exercised, shall be reached and documented prior to purchase. NASA shall have no option to take title if its contribution is $1,000 or less.

(8) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes grantee-owned

components (for cost sharing or other purposes), paragraph (b)(7) of this section applies. The requirement that NASA seek agreement to retain its option to take title shall further apply where it is expected that one or more grant-acquired components costing $1,000 or less will be fabricated into a single coherent system costing in excess of $1,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(c) *Procedures.* (1) When a decision is made to revoke or discontinue support of a grant or cooperative agreement, the grants officer shall notify the grantee in writing of the requirement under the instrument for submission of a final inventory report of Government-furnished equipment.

(2) When the cognizant NASA technical officer or program manager desires that NASA take title to a major item of grantee purchased equipment, the technical officer shall request the grants officer to obtain information regarding the grantee's desire to retain the equipment, the use to which it would be put in the absence of further NASA support of the grant or cooperative agreement, and any substantial deleterious effects of removal of the equipment.

(3) The grants officer shall obtain the information and provide copies to the technical officer and the University Affairs Office for their coordinated review and recommendation regarding acquisition of title. The technical officer shall inform the grants officer of the recommendation by means of a memorandum concurred in by the University Affairs Office.

(4) When NASA acquires title to major items of grantee purchased equipment, the grants officer shall notify both the cognizant NASA installation financial management officer and supply and equipment management officer so that proper entries can be made in financial and property accounting records.

§ 1260.506 Revocation.

(a) NASA grants and cooperative agreements may be revoked in whole or in part by NASA after consultation with the grantee, except that a revocation shall not affect any financial commitment which in the judgment of NASA had become firm prior to the effective date of the revocation and is otherwise appropriate. Upon revocation, the grantee shall reduce, insofar as possible, the amount of outstanding commitments and repay by check made payable to the National Aeronautics and Space Administration, the uncommitted balance of all funds that have been paid to the grantee by NASA under the terms of the particular grant or cooperative agreement.

(b) The grantee shall communicate with NASA whenever it has reason to believe that circumstances may necessitate revocation of the grant or cooperative agreement. The most common cause for revocation would be the inability of the grantee to carry out the research for which the grant or cooperative agreement was made or to adhere to the other conditions set forth in the instrument. As a general rule, the availability of the services of the principal investigator named in the instrument is a decisive factor in NASA's decision to award the grant or cooperative agreement. Consequently, NASA should be informed immediately whenever it appears that the principal investigator will find it impossible to continue to direct the research.

§ 1260.507 Transfer of grants or cooperative agreements to other institutions.

Awards cannot be transferred from one institution to another. However, when the principal investigator changes his or her organizational affiliation and desires support for the research at a new location, he or she must submit a new proposal via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant or cooperative agreement, describing the scientific progress and expenditure to date, will be required if that instrument is revoked.

§ 1260.508 Accounting procedures.

While no particular classification of accounts is required, it is expected that grantees will maintain records for each grant or cooperative agreement, in accordance with the principles enunciated in § 1260.405, which will permit preparation of the required fiscal report and make possible the determination that grant or cooperative agreement funds were used for the general purpose for which the award was made.

§ 1260.509 Property management standards.

(a) *Definitions.* The following definitions apply for the purpose of this section.

(1) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(2) *Personal property.* Personal property means property of any kind except real property. It may be tangible, having physical existence; or intangible, having no physical existence, such as patents, inventions and copyrights.

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. A recipient may use its own definition of nonexpendable personal property provided the definition would at least include all tangible personal property as defined in paragraph (a)(2) of this section. "Equipment" as used in this subpart, is another term for nonexpendable personal property.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable personal property.

(5) *Excess personal property.* Excess personal property means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the Head thereof.

(6) *Acquisition cost of purchased nonexpendable personal property.* Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(7) *Exempt property.* Exempt property means that tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in § 1260.505(b)(2).

(b) *Property management standards for nonexpendable personal property.* The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property.

(ii) Manufacturer's serial number, model number, national stock number, or other identification number.

(iii) Whether title vests in the recipient or the Federal Government.

(iv) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(v) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vi) Location, use and condition of the property and the date the information was reported.

(vii) Unit acquisition cost.

(viii) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal sponsoring agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the grants officer.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(c) *Exempt property.* Title to nonexpendable personal property acquired with project funds, shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in § 1260.505(b)(2).

§ 1260.510 Screening of requests for Government-furnished equipment.

(a) Pursuant to NASA Management Instruction 4000.2, "NASA Equipment Utilization," an agencywide Equipment Visibility System (EVS) has been established to identify and effect optimum use and reuse of Government-owned equipment items of high value and reuse potential. The EVS and this section apply only to grantee requests for Government-furnished equipment. Requests for grantee acquired equipment are neither required nor encouraged to be screened through the EVS.

(b) When a grantee requests Government-furnished equipment of $1,000 or more, the grants officer shall screen the item through the installation's EVS coordinator. Screening requests shall list the manufacturer, model number, description, national stock number, power requirements, estimated cost, and any other information deemed necessary by the EVS coordinator to properly identify the item. Urgent requests may be screened by telephone.

(c) When suitable equipment is located through the foregoing procedures, the holding installation will place a "freeze" on the item for 10 working days pending shipping instructions. Extension of the freeze period must be requested through the EVS coordinator if shipping instructions cannot be furnished within the required period. (See paragraph 5.307, NASA Equipment Management Manual, NASA Handoook 4200.1.)

§ 1260.511 Standards for grantee's financial management systems.

As prescribed by Office of Management and Budget (OMB) Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organization," the grantee's financial management system shall provide for:

(a) Accurate, current and complete disclosure of the financial results of the project.

(b) Records that identify adequately the source and application of funds for the grant or cooperative agreement. These records shall contain information pertaining to the award, authorizations, obligations, unobligated balances, assets, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. The grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Comparison of actual outlays with obligated amounts for the grant or cooperative agreement.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursements. See Exhibit F of this Handbook.

(f) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of § 1260.405 and the terms of the grant or cooperative agreement.

(g) Accounting records that are supported by source documentation.

(h) Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those authorizing the expenditure of NASA funds to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, "Standards for Audit of Government Organizations, Programs, Activities and Functions." These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the grantee be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the NASA grants and other agreements. Such tests would include an appropriate sampling of NASA agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every 2 years. The frequency of these examinations shall depend upon the nature, size and the complexity of the activity. These examinations do not relieve the cognizant Federal audit agency of its audit responsibilities, but may affect the frequency and scope of such audits.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 1260.512 Procurement standards.

As prescribed by Office of Management and Budget Circular A-110, the grantee's procurement practices shall be subject to the following standards:

(a) The grantee shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using NASA funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which NASA funds are used, where, to his or her knowledge, there exists a financial interest on the part of (1) that person, (2) that person's immediate family or partners, or (3) any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the recipients' officers, employees or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals should be excluded from competing for such procurements except when the grantor agency gives approval to a grantee's request to waive this requirement for a particular procurement. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for the bid/offer to be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(c) The grantee shall establish procurement procedures that provide for, at a minimum the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(3) Positive efforts shall be made by the grantee to utilize small and disadvantaged business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing NASA funds.

(4) The types of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources and accessibility to other necessary resources.

(6) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(7) Procurement records and files for purchases in excess of $10,000 shall include the following:

(i) Basis for contractor selection;

(ii) Justification for lack of competition when competitive bids or offers are not obtained; and

(iii) Basis for award, cost or price.

(8) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

(d) The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by grantees and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the specific project, for the purpose of making audits, examinations, excerpts and transcriptions.

§ 1260.513 Suspension and termination procedures.

(a) *Policy.* When a university grant or cooperative agreement is terminated at other than its planned end date, the result can be a significant disruption in the university educational activities. NASA has established excellent relationships with hundreds of universities, including a credibility for responsibly understanding and handling the problems experienced by educational institutions. This has resulted in the retention of highly qualified investigators on NASA work and participation of the most able graduate students. To maintain that credibility, suspension and termination of grants or cooperative agreements prior to the planned completion date must be reserved for those few exceptional situations which cannot be handled any other way.

(b) *Suspension.* When a grantee has failed to comply with the terms of a grant or cooperative agreement, NASA may, on reasonable notice to the grantee, temporarily suspend the grant or cooperative agreement, withhold further payments, and prohibit the grantee from incurring additional obligations of funds, pending corrective action by the grantee or a decision by NASA to terminate in accordance with paragraph (c) or (d) of this section. NASA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of the cost principles set forth in § 1260.405.

(c) *Termination for cause.* NASA reserves the right to terminate any grant or cooperative agreements in whole or in part at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the instrument. NASA shall promptly notify the grantee in writing of the determination, the reasons for the termination, and the effective date. Payments made to the grantee or recoveries by NASA under grants or cooperative agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

(d) *Termination for convenience.* NASA or the grantee may terminate grants or cooperative agreements in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. NASA shall allow full credit to the grantee for NASA's share of the noncancellable obligations, properly incurred by the grantee prior to termination.

(e) *University grants and cooperative agreements.* Before suspending or terminating any grant or cooperative agreement with a university as set forth in paragraphs (b) through (d) of this section, the matter shall be coordinated within NASA as prescribed in NMI 8340.1, "Actions Leading to Decisions to Terminate University Grants and Contracts for the Convenience of the Government"

§ 1260.514 Closeout procedures.

The closeout of a grant or cooperative agreement is the process by which NASA determines that all applicable administrative actions and all required work under the instrument has been completed by the grantee and NASA. Closeout procedures include the following:

(a) Upon request, NASA shall make prompt payments to a grantee for allowable reimbursable costs under the grant or cooperative agreement being closed out.

(b) The grantee shall immediately refund any balance of unobligated (unencumbered) cash that NASA has advanced or paid.

(c) NASA shall obtain from the grantee within 90 calendar days after the date of completion of the grant or cooperative agreement, all financial, performance, and other reports required as the condition of the instrument. NASA may authorize additional time for this purpose when requested by the grantee.

(d) The grantee shall account for any property acquired with Federal funds, or received from the Government in accordance with the provisions of § 1260.408.

(e) In the event a final audit has not been performed prior to the closeout of the grant or cooperative agreement, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 1260.515 Novation and change of name agreements.

All novation agreements and change of name agreements of the grantee, prior to execution, shall be reviewed by general counsel for legal sufficiency. 41 CFR, Ch. 18, 26.400 shall be followed for general guidance. Where possible, novation is preferable to termination followed by a new award or any other procedure which causes unnecessary paperwork or disrupts ongoing research efforts.

Subpart 6—Reports

§ 1260.600 General.

This subpart prescribes reports designed to provide records and statistics for management purposes and to comply with statutory requirements.

§ 1260.601 Individual procurement action report (NASA Form 507).

The Individual Procurement Action Report (NASA Form 507) is designed to provide essential procurement records and statistics through a single, uniform reporting program as a basis for required recurring and special reports to the President, the Congress, the Department of Labor, the Office of Emergency Preparedness, the General Accounting Office, the Small Business Administration, and other Federal agencies. The preparation and utilization of NASA Form 507 has been made an integral part of the agencywide system for the recording and reporting of financial and contractual status (FACS). Complete instructions covering the operation of this system are contained in the NASA Financial Management Manual.

§ 1260.602 Committee on academic science and engineering (CASE) reports.

NASA Form 1356, "Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects" is either submitted with funded procurement requests pursuant to NASA Management Instruction 5101.12, "Policy and Procedures Concerning Procurement," or in the case of certain non-funded actions, initiated by the procuring office. All NASA Forms 1356 will be completed, checked and promptly forwarded to the University Affairs Office, NASA Headquarters (Code LU-16), in accordance with the instructions on the form.

§ 1260.603 Federal cash transactions report (SF 272).

Federal Cash Transactions Reports (SF 272) will be submitted quarterly as a condition of receiving advance payments, in accordance with Exhibit F of this part.

§ 1260.604 Annual inventory listing of Government-owned property.

As provided in § 1260.408(f), an annual inventory listing of Government-owned property will be submitted by July 31 of each year, including the information specified in § 1260.509 and beginning and ending dollar value totals for the reporting period.

§ 1260.605 Status and final reports.

(a) Five copies of a brief, informal, Semiannual Status Report including a concise statement of the research accomplished during the report period shall be submitted.

(b) Upon completion of the research, the grantee shall submit five copies of a final technical report which summarizes the results of the entire project. Citation of publications resulting from the research, or abstracts thereof, may serve as all or part of this final report. Research results not intended for publication in technical journals must be in the format prescribed for NASA Technical Notes. In addition, the grantee will report to NASA whether or not any inventions required to be reported under the grant or cooperative agreement have been made in the performance of work thereunder.

(c) A properly certified final fiscal report is required for each grant and cooperative agreement. Report forms for this purpose are forwarded to the business office of the grantee institution, together with the copy of the instrument; additional forms may be requested. Two copies of the final fiscal report should be forwarded to NASA after work under the grant or cooperative agreement has been completed.

APPENDIX—LISTING EXHIBITS AND ATTACHMENTS

Exhibit A—Assurance of Compliance—Civil Rights Act (NASA Form 1206).

Exhibit B—Research Grant Award (NASA Form 1463).

Exhibit C—Cooperative Agreement (NASA Form 1562).

Exhibit D—NASA Provisions for Research Grants and Cooperative Agreements (NASA Form 1463A).

Exhibit E—Step Funding Illustration.

Exhibit F—Instructions to Recipient Organizations for Acquiring Advance Payments.

Exhibit G—Patent Rights (Small Business Firm or Nonprofit Organization).

Attachment 1—Authorized Signature Card for Payment Vouchers on Letter of Credit (Standard Form 1194).

Attachment 2—Letter of Credit (Standard Form 1193).

Attachment 3—Payment Voucher on Letter of Credit (Sample) (TFS 5401).

Attachment 4—Federal Cash Transactions Report (Standard Form 272).

Attachment 5—Federal Cash Transactions Report (Continuation) (Standard Form 272-A).

The preceding list of forms and instructions may be obtained by the Grantee from the Procurement Officer of the following NASA Offices:

Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035

Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899

Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23665

Lewis Research Center, National Aeronautics and Space Administration, Cleveland, OH 44135

Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Huntsville, AL 35812

National Space Technology Laboratories, National Aeronautics and Space Administration, NSTL Station, MS 39529

Headquarters Contracts and Grants Division, National Aeronautics and Space Administration, Washington, DC 20546

EXHIBIT G—PATENT RIGHTS (SMALL BUSINESS FIRM OR NONPROFIT ORGANIZATION) (JULY 1981)

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention" means any invention of the Grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the

purpose of this clause, the size standards for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and in subcontracting, contained in 13 CFR 121.3-12, will be used.

(6) "Nonprofit Organization" means universities and other institutions of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(b) *Allocation of Principal Rights.* The Grantee may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause. With respect to any Subject Invention in which the Grantee retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world for which the Grantee has elected to retain title.

(c) *Invention Disclosure, Election of Title and Filing of Patent Applications by Grantee.* (1) After a Subject Invention has been disclosed in writing by the inventor(s) to Grantee personnel responsible for the administration of patent matters, the Grantee will:

(i) Disclose such invention to the Grants Officer within six months;

(ii) Elect whether or not to retain title to any such invention by notifying the Grants Officer within twelve months of disclosure to the Grantee, but in any event, at least three months (unless shortened by the Grants Officer) before (A) a public use or on sale of the invention occurs, (B) a manuscript describing the invention is submitted for publication without assurances of confidentiality, or (C) the invention is otherwise made available to the public;

(iii) File its initial patent application on an elected invention within two years after election; and

(iv) File patent applications in additional countries within either, ten months of the corresponding initial patent application, or six months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons.

(2) Request for extension of the time for disclosure to the Grants Officer, election and filing, where reasonable, will normally be granted.

(3) The disclosure to the Grants Officer shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The report shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure.

(d) *Forfeiture of Title.* (1) The Grantee will convey to NASA, upon written request title to any Subject Invention:

(i) If the Grantee fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title;

(ii) In those countries in which the Grantee fails to file patent applications within the times specified in (c) above: *Provided however,* That if the Grantee has filed a patent application in a country after the times specified in (c) above but prior to its receipt of the written request of NASA, the Grantee shall continue to retain title in that country; or

(iii) In any country in which the Grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum Rights to Grantee.* The Grantee will retain a nonexclusive, royalty-free, license throughout the world in each Subject Invention to which the Government obtains title except if the Grantee fails to disclose the Subject Invention within the times specified in (c) above. This license extends to, and is revocable and transferable as, specified in 9.108-4(b) of the NASA Procurement Regulation.

(f) *Grantee Action to Protect Government's Interest.* (1) The Grantee agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those Subject Inventions for which the Grantee retains title, and

(ii) Convey title to NASA when requested under (d) above and to enable the Government to obtain patent protection throughout the world on that Subject Invention.

(2) The Grantee agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Grantee each Subject Invention made under this grant in order that the Grantee can comply with the disclosure provisions of (c) above and to execute all papers

necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. The disclosure format should require as a minimum the information requested by subparagraph (c)(3) above. The Grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The Grantee will notify the NASA of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the patent office.

(4) The Grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement. "This invention was made with Government support under (identify the grant) awarded by NASA. The Government has certain rights in this invention."

(5) The Grantee shall furnish the Grants Officer:

(i) Interim reports every twelve months from the date of this grant, listing all Subject Inventions required to be disclosed during that period;

(ii) A final report prior to close out of this grant listing all Subject Inventions;

(iii) Notification of all subcontracts for experimental, developmental, research, design or engineering work; identification of the patent rights clause therein, and a copy of the subcontract upon request; and

(iv) Upon request, the filing date, serial number, and title; a copy of the patent application; and patent number and issue date for any Subject Invention in any country in which the Grantee has applied for patents.

(g) *Subcontracts.* (1) The Grantee shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed in the United States, its possessions, or Puerto Rico, by a small business firm or a nonprofit organization. The subcontractor will retain all rights provided for the Grantee in this clause, and the Grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Grantee will include in all subcontracts, regardless of tier, for experimental, developmental, research, design or engineering work with other than a small business firm or nonprofit organization the patent rights clause required by 9.107-4(b) of the NASA Procurement Regulation.

(h) *Reporting on Utilization of Subject Inventions.* The Grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Grantee, and such other data and information as NASA may reasonably specify. The Grantee also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding or informal investigation undertaken by NASA in accordance with 9.108-12 of the NASA Procurement Regulation. To the extent data or information supplied under this section is considered by the Grantee, its licensee or assignee to be privileged and confidential and is so marked, NASA agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Grantee or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Grantee agrees that with respect to any Subject Invention in which it has acquired title, NASA has the right in accordance with the procedures of 9.108-12 of the NASA Procurement Regulation to require the Grantee, an assignee or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Grantee, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the Grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical applica-

tion of the Subject Invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by section (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special Provisions for Grants with Nonprofit Organizations.* If the Grantee is a nonprofit organization, it agrees that:

(1) Rights to a Subject Invention in the United States may not be assigned without the approval of NASA except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (*Provided,* That such assignee will be subject to the same provisions as the Grantee);

(2) The Grantee may not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of (i) five years from first commercial sale or use of the invention, or (ii) eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, NASA approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The Grantee will share any royalties collected on a Subject Invention with the inventor(s); and

(4) The balance of any royalties or income earned by the Grantee with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, will be utilized for the support of scientific research or education.

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

Subpart 1261.1—Employees's Personal Property Claims

Sec.

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SOURCE: 45 FR 48104, July 18, 1980, unless otherwise noted.

Subpart 1261.1—Employees' Personal Property Claims

AUTHORITY: 31 U.S.C. 3721.

§ 1261.100 Scope of subpart.

This subpart prescribes regulations governing the settlement of claims against the National Aeronautics and Space Administration (NASA) for damage to, or loss of, personal property incident to service with NASA.

§ 1261.101 Claimants.

(a) A claim for damage to, or loss of, personal property incident to service with NASA may be made only by:

(1) An officer or employee of the National Aeronautics and Space Administration;

(2) A member of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey and Public Health Service) assigned to duty with or under the jurisdiction of NASA;

(3) The authorized agent or legal representative of a person named in paragraph (a) (1) or (2) of this section; or

(4) The survivors of a person named in paragraph (a) (1) or (2) of this section in the following order of precedence: Spouse; children, father or mother, or both; or brothers or sisters, or both. Claims by survivors may be allowed whether arising before, concurrently with, or after the decedent's death, if otherwise covered by this subpart.

(b) Employees of contractors with the United States and employees of nonappropriated fund activities are not included within the meaning of paragraph (a) (1) or (2) of this section.

(c) Claims may not be made by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 1261.102 Maximum amount.

On or after October 1, 1982, the maximum amount that may be paid under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 3721) is $25,000.00.

[50 FR 43128, Oct. 24, 1985]

§ 1261.103 Time limitations.

(a) A claim may be allowed only if the claim is presented in writing within 2 years after it accrues. For the purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage is or should have been discovered by the claimant through the exercise of due diligence.

(b) If a claim accrues in time of war or if an armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier. The dates of beginning and ending of such an armed conflict are the dates established by concurrent resolution of the Congress or by a determination of the President.

§ 1261.104 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, the claimant's agent, private employee, or family member (the standard to be applied is that of reasonable care under the circumstances);

(2) The possession of the property lost or damaged and the quantity is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with NASA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless excluded by § 1261.105.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or provided by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or provided by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office working area, hospital, or other place authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *House trailers.* Claims may be allowed for damage to, or loss of, house trailers and their contents under the provisions of paragraph (c)(2) of this section.

(4) *Negligence of the Government.* Claims may be allowed for damage to, or loss of, property caused by the negligence or wrongful act or omission of any employee of the Government while acting within the scope of office or employment.

(5) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(i) Enemy action or threat of action or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(6) *Property used for benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, an authorized official.

(7) *Clothing and accessories.* Claims may be allowed for damage to, or loss of, clothing or accessories customarily worn on the person, such as eyeglasses, hearing aids or dentures.

§ 1261.105 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Claims may not be allowed for property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to claimant or provided in kind by the United States.

(b) *Money or currency.* Claims may not be allowed for loss of money or currency, except when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by paragraph (a)). Reimbursement for loss of money or currency is limited to an amount which is determined reasonable to have been in the claimant's possession at the time of the loss.

(c) *Government property.* Claims may not be allowed for property owned by the United States, except that for which the claimant is financially responsible to any agency of the Government other than NASA.

(d) *Business property.* Claims may not be allowed for property used in a private business enterprise.

(e) *Articles of extraordinary value.* Claims may not be allowed for valuable articles, such as cameras, watches, jewelry, furs; or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked: *Provided*, That reasonable protection or security measures have been taken by claimant.

(f) *Unserviceable property*. Claims may not be allowed for worn-out unserviceable property.

(g) *Illegal possession*. Claims may not be allowed for property acquired, possessed, or transported in violation of law or in violation of applicable regulations or directives.

(h) *Estimate fees*. Claims may not include fees paid to obtain estimates or repair, except when it is clear that an estimate could not have been obtained without paying a fee.

(i) *Automobiles and other vehicles*. Claims may not be allowed for damage to, or loss of, automobiles and other vehicles unless:

(1) The vehicles were required to be used for official Government business (official Government business, as used here, does not include travel between quarters and place of duty, parking of vehicles incident to such travel, or use of vehicles for the convenience of the owner); or

(2) Shipment of motor vehicles to, from, or between overseas areas was being furnished or provided by the Government; or

(3) The damage or loss was caused by the negligent or wrongful act or omission of any employee of the Government acting within the scope of office or employment.

§ 1261.106 Submission of claims.

All claims shall be submitted in duplicate to the Administrator or designee on NASA Form 1204, "Employee's Claim for Damage to, or Loss of, Personal Property Incident to Service."

§ 1261.107 Evidence in support of claim.

(a) *General*. In addition to the information required on NASA Form 1204, and any other evidence required by the Administrator or designee, the claimant will furnish the following evidence when relevant:

(1) A corroborating statement from the claimant's supervisor or other person or persons having personal knowledge of the facts concerning the claim.

(2) A statement of any property recovered or replaced in kind.

(3) An itemized bill of repair for property which has been repaired, or one or more written estimates of the cost of repairs from competent persons if the property is repairable but has not been repaired.

(b) *Specific classes of claims*. Claims of the following types shall also be accompanied with specific and detailed evidence as indicated:

(1) *Theft, burglary, etc*. A statement describing in detail the location where the loss occurred and the facts and circumstances surrounding the loss, including supporting documentation, e.g., a police report.

(2) *Transportation losses*. A copy of orders authorizing the travel, transportation or shipment, or a certificate explaining the absence of such orders and stating their substance; all bills of lading and inventories of property shipped; and a statement indicating the condition of the property when turned over to the carrier and when received from the carrier.

§ 1261.108 Recovery from carriers, insurers, and other third parties.

(a) *General*. NASA is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses or losses which may not be recoverable from NASA. The procedures set forth in this section are designed to enable the claimant to obtain the maximum amount of compensation for personal property loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim.

(b) *Demand on carrier, contractor, warehouse owner/operator, or insurer*. When it appears that property has been damaged or lost under circumstances in which a carrier, warehouse owner/operator, contractor or insurer may be responsible, the claimant shall make a written demand on such party, either before or after submitting a claim against NASA. The Administrator or designee, if requested, will assist in making demand on the third party. No such demand need be made if, in the opinion of the Administrator or designee, it would be impracticable or any recovery would be insignificant, or if circumstances preclude the claimant from making timely demand.

(c) *Action subsequent to demand.* A copy of the demand and of any related correspondence shall be submitted to the Administrator or designee. If the carrier, insurer, or other third party offers a settlement which is less than the amount of the demand, the claimant shall consult with the Administrator or designee before accepting the amount offered. The claimant shall also notify the Administrator or designee promptly of any other action by a third party, including settlement, partial settlement, or denial of liability.

(d) *Application of recovery.* When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart. When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of total loss subject to the maximum set forth in § 1261.102.

(e) *Transfer of rights.* The claimant shall assign to the United States, to the extent of any payment accepted on a claim, all rights, title, and interest in any claim he/she may have against any carrier, insurer, or other party arising out of the accident or incident on which the claim against the United States is based. The claimant shall also, upon request, furnish such evidence and other cooperation as may be required to enable the United States to enforce the claim. After payment on the claim by the United States, the claimant shall, upon receipt of any payment from a carrier, insurer, or other party, notify the Administrator or designee and pay the proceeds to the United States to the extent required under the provisions of paragraph (d).

§ 1261.109 Computation of allowance.

(a) The amount allowed for damage to or loss of any item of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange). There will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable: Provided, That the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss, with appropriate recognition of current replacement value.

(c) *Limitation on agent or attorney fees.* No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled shall be paid or delivered to or received by an agent or attorney on account of services rendered in connection with that claim, any contract to the contrary notwithstanding (31 U.S.C. 243).

§ 1261.110 Settlement of claims.

(a) *Settlement officials.* (1) Claims in the amount of $5,000 or more will be acted upon by the General Counsel. Claims less than $5,000 will be acted upon by the Chief Counsel of the NASA Field Installation where the employee was assigned at the time of the loss or damage or the Assistant General Counsel for Litigation for NASA Headquarters claims.

(2) Claims arising for $5,000 or more shall be investigated by the Chief Counsel or Assistant General Counsel for Litigation, as appropriate, and a report and recommendation thereon

shall be forwarded to the General Counsel.

(b) *Action by settlement official.* (1) For each claim, the settlement official shall complete a report in duplicate on NASA Form 1204 and retain a claim file consisting of the original claim, the report, and any other relevant evidence or documents.

(2) When a claim is allowed in an amount acceptable to the claimant, the settlement official shall prepare a "Voucher for Payment of Employees' Personal Property Claims" (NASA Form 1220), have it properly executed by the claimant, and forward it with a copy of the approved claim (NASA Form 1204) to the appropriate NASA fiscal or financial management office for payment.

(3) When a claim is disallowed or is partially allowed in an amount unacceptable to the claimant, the settlement official shall notify the claimant in writing of the action taken and the reasons therefor. If not satisfied with the action taken, the claimant may, within 60 days after receipt of such notice, request reconsideration of the claim and may submit any new evidence that he/she feels to be pertinent to the claim. If such a claim has been disallowed at the field installation level, the claimant may request reconsideration by the field installation, or by the General Counsel, or both.

(c) *Final and conclusive.* The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

Subpart 1261.2—[Reserved]

Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing on or After January 18, 1967

AUTHORITY: 28 U.S.C. 2671-2680, 42 U.S.C. 2473(c)(13), and 28 CFR Part 14.

§ 1261.300 Scope of subpart.

This subpart sets forth the procedures for:

(a) The submission of, and action by NASA upon, claims against the United States arising out of the activities of NASA for damage to or loss of property or personal injury or death, and designates the NASA officials authorized to act upon such claims.

(b) The handling of lawsuits against NASA employee(s) for damage to or loss of property or personal injury or death resulting from a NASA employee's activities within the scope of his/her office or employment.

§ 1261.301 Authority

(a) Under the provisions of the Federal Tort Claims Act, as amended (see 28 U.S.C. 2671-2680), and subject to its limitations, the Administrator or designee is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any NASA employee while acting within the scope of his/her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. In exercising such authority, the Administrator or designee is required to act in accordance with regulations prescribed by the Attorney General (28 CFR Part 14). An award, compromise, or settlement in excess of $25,000 may be effected only with the prior written approval of the Attorney General or designee.

(b) Under sec. 203(c)(13)(A) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473(c)(13)(A), NASA is authorized to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for $25,000 or less against the United States for bodily injury, death or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 42 U.S.C. 2473(a). At the discretion of NASA, a claim may be settled and paid under this authority even though the United States could not be held legally liable to the claimant.

(c) Under 42 U.S.C. 2473(c)(13)(B), if NASA considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 42 U.S.C. 2473(c)(13)(A), NASA may report the facts and circumstances of the claim to the Congress for its consideration or to the Comptroller General as provided in the "Supplemental Appropriations Act, 1978," Pub. L. 95-240 (92 Stat. 107), 31 U.S.C. 724a.

(d) Under 28 U.S.C. 2679, the Attorney General of the United States shall defend any civil action or proceeding brought in any court against a Government employee for injury or loss of property or personal injury or death, resulting from the operation of a motor vehicle by the Government employee while acting within the scope of office or employment. In effect, this legislation is designed to protect an employee driving a motor vehicle on Government business by converting such a civil court action or proceeding against the employee into a claim against the United States: Provided, That the employee was acting within the scope of employment at the time of the accident. The remedy against the United States provided by 28 U.S.C. 2672 (administrative adjustment of claims) and 28 U.S.C. 1346(b) (civil action against the United States) then becomes the plaintiff's exclusive remedy.

§ 1261.302 Claim.

Unless the context otherwise requires, "claim" means a claim for money damages against the United States arising out of the activities of NASA, for injury or loss of property, or personal injury or death. A claim "arises" at the place where the injury, loss, or death occurs.

§ 1261.303 Claimant.

(a) A claim for damage to or loss of property may be presented by the owner of the property, duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor(rix) or administrator(rix) of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing and be accompanied by evidence of the agent's or legal representative's authority to present a claim on behalf of the claimant as agent, executor(rix), administrator (rix), parent, guardian, or other representative.

§ 1261.304 Place of filing claim.

A claim arising in the United States should be submitted to the Chief Counsel of the NASA Installation whose activities are believed to have given rise to the claimed injury, loss, or death. If the identity of such installation is not known, or if the claim arose in a foreign country, the claim should be submitted to the General Counsel, National Aeronautics and Space Administration, Washington, DC 20546.

§ 1261.305 Form of claim.

(a) The official designated in § 1261.308 shall, prior to acting on a claim, require the claimant to submit a completed Standard Form 95—"Claim for Damage, Injury or Death."

(b) NASA installations will furnish copies of Standard Form 95 upon request.

§ 1261.306 Evidence and information required.

(a) The circumstances alleged to have given rise to the claim, and the amount claimed, should, so far as possible, be substantiated by competent evidence. Supporting statements, estimates, and the like should, if possible, be obtained from disinterested parties. For specific guidance as to Federal

Tort Claims Act claims, see Department of Justice regulations on "Administrative Claims under Federal Tort Claims Act" at 28 CFR Part 14.

(b) In addition to the evidence and information required under paragraph (a), any claimant shall be required to submit information as to the amount of money or other property received as damages or compensation, or which the claimant may be entitled to receive, by reason of the claimed injury, loss, or death from persons other than NASA or NASA employees. (Such persons include, but are not limited to, insurers, employers, and persons whose conduct was a cause of the accident or incident.)

(c) Any document in other than the English language should be accompanied by an English translation.

§ 1261.307 Time limitations.

(a) A claim may not be acted upon pursuant to the Federal Tort Claims Act unless it is presented to NASA within 2 years after it accrued.

(b) A claim may not be acted upon pursuant to 42 U.S.C. 2473(c)(13) (A) or (B) unless it is presented to NASA within 2 years after the occurrence of the accident or incident out of which the claim arose.

(c) A claim shall be deemed to have been presented to NASA when NASA receives from a claimant or duly authorized agent or legal representative an executed Standard Form 95 or other written notification of an incident or accident, accompanied by a claim in a sum certain.

§ 1261.308 NASA officials authorized to act upon claims.

(a) Claims in the amount of $10,000 or more will be acted upon as directed by the General Counsel;

(b) Claims less than $10,000 will be acted upon by the Chief Counsel of the NASA Field Installation where the employee was assigned at the time of the loss or damage or the Assistant General Counsel for Litigation for NASA Headquarters claims.

(c) Claims of $10,000 or more, pursuant either to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13), shall be acted upon only with the prior approval of the General Counsel. Such claims shall be forwarded to the General Counsel for approval, if the Chief Counsel or the Assistant General Counsel for Litigation is of the opinion that the claim may be meritorious and otherwise suitable for settlement under any authority. A claim so forwarded should be accompanied by a report of the facts of the claim, based upon such investigation as may be appropriate, and a recommendation as to the action to be taken.

(d) Claims acted upon by NASA officials pursuant to this section shall be acted upon pursuant to the Federal Tort Claims Act, or 42 U.S.C. 2473(c)(13) (A) or (B), as the NASA official deems appropriate.

§ 1261.309 Action under the Federal Tort Claims Act.

Where a claim is to be acted upon pursuant to the Federal Tort Claims Act, action shall be taken in accordance with 28 U.S.C. 2672, other provisions of the Federal Tort Claims Act as may be applicable (e.g., 28 U.S.C. 2680), and regulations prescribed by the Attorney General which appear at 28 CFR Part 14.

§ 1261.310 Investigation of claims.

The officials designated in § 1261.308 shall conduct such investigation of a claim as deemed appropriate. The officials may request any NASA office or other Federal agency to assist in the investigation.

§ 1261.311 Claims requiring Department of Justice approval or consultation.

(a) When in the opinion of the NASA official designated in § 1261.308, Department of Justice approval or consultation may be required, pursuant to 28 CFR Part 14, in connection with a claim being acted upon under the Federal Tort Claims Act, the following papers shall be forwarded to the General Counsel:

(1) A short and concise statement of the facts of the claim.

(2) Copies of all relevant portions of the claim file.

(3) A statement of the recommendations or views of the forwarding official.

(b) A claim forwarded to the General Counsel in accordance with paragraph (a) of this section, or upon which the General Counsel is acting pursuant to § 1261.308(c), shall be referred to the Department of Justice when, in the opinion of the General Counsel, Department of Justice approval or consultation is required or may be appropriate.

§ 1261.312 Action on approved claims.

(a) Upon settlement of a claim, the official designated in § 1261.308 will prepare and have executed by the claimant a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 42 U.S.C. 2473(c)(13), or a Voucher for Payment under Federal Tort Claims Act (Standard Form 1145) if the claim has been acted upon pursuant to the Federal Tort Claims Act. The form will then be referred to the cognizant NASA installation fiscal or financial management office for appropriate action.

(b) When a claimant is represented by an attorney, both the claimant and attorney will be designated as "payees" on the voucher, and the check will be delivered to the attorney whose address shall appear on the voucher.

(c) Acceptance by the claimant, agent, or legal representative, of any award, compromise, or settlement made pursuant to this subpart shall be final and conclusive on the claimant, agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 1261.313 Required notification in the event of denial.

Final denial of a claim shall be in writing and shall be sent to the claimant, the attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that if the claimant is dissatisfied with NASA's action, the claimant may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing the notification.

§ 1261.314 [Reserved]

§ 1261.315 Procedures for the handling of lawsuits against NASA employees arising within the scope of their office or employment.

The following procedures shall be followed in the event that a civil action or proceeding is brought, in any court, against any employee of NASA (or against the estate) for injury or loss of property or personal injury or death, resulting from the NASA employee's activities while acting within the scope of office or employment:

(a) After being served with process or pleadings in such an action or proceeding, the employee (or the executor(rix) or administrator(rix) of the estate) shall immediately deliver all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the accident giving rise to the court action or proceeding, to the following officials:

(1) The Assistant General Counsel for Litigation insofar as actions or proceedings against employees of NASA Headquarters are concerned; or

(2) The Chief Counsel of the NASA Installation at which the employee is employed, insofar as actions against other than NASA Headquarters employees are concerned.

(b) Upon receipt of such process and pleadings, the Assistant General Counsel for Litigation or the Chief Counsel of the NASA Installation receiving the same shall furnish to the U.S. Attorney for the district embracing the place where the action or proceeding is brought and, if appropriate, the Director, Torts Branch, Civil Division, Department of Justice, the following:

(1) Copies of all such process and pleadings in the action or proceeding promptly upon receipt thereof; and

(2) A report containing a statement of the circumstances of the incident giving rise to the action or proceeding, and all data bearing upon the question

of whether the employee was acting within the scope of office or employment with NASA at the time of the incident, at the earliest possible date, or within such time as shall be fixed by the U.S. Attorney upon request.

(c) The Assistant General Counsel for Litigation or a Chief Counsel acting pursuant to paragraph (b) of this section shall submit the following documents to the General Counsel, who is hereby designated to receive such documents on behalf of the Administrator:

(1) Copies of all process and pleadings submitted to a U.S. Attorney in accordance with paragraph (b).

(2) In addition, where the action or proceeding is for damages in excess of $25,000, or where (in the opinion of the Chief Counsel) such action or proceeding involves a new precedent, a new point of law, or a question of policy, copies of reports and all other papers submitted to the U.S. Attorney.

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration

AUTHORITY: 42 U.S.C. 2473(c)(1), 31 U.S.C. 951, and 4 CFR Parts 101-105.

§ 1261.400 Scope of subpart.

This subpart:

(a) Sets forth certain procedures relating to the collection, compromise, suspension or termination of collection action, and referral, of civil claims of the United States arising out of the activities of the National Aeronautics and Space Administration (NASA);

(b) Designates NASA officials authorized to effect such actions; and

(c) Requires compliance with the Federal Claims Collection Standards' joint General Accounting Office-Department of Justice regulations at 4 CFR Parts 101 to 105.

§ 1261.401 Compliance with 4 CFR Parts 101-105.

This subpart requires compliance with the "Joint Regulations Prescribing Standards for Administrative Collection, Compromise, Termination of Agency Collection Action, and Referral to the General Accounting Office, and to the Department of Justice for Litigation, of Civil Claims by the Government for Money or Property." (4 CFR Parts 101 to 105).

§ 1261.402 Delegation of authority.

(a) The following NASA officials are hereby delegated authority to take such action as is authorized by the provisions of this subpart and other applicable laws and regulations, including action to effect the collection, compromise, suspension or termination of collection action, and referral of claims:

(1) With respect to claims which arise out of the activities of a NASA field installation: The Director of that installation or a designee who reports directly to the Director. A copy of such designation, if any, by the Director of the installation shall be sent to the Director, Financial Management Division, NASA Headquarters.

(2) With respect to all other claims: The Director, Headquarters Administration Division or a designee who reports directly to the Director.

(b) For the purposes of this section, "claim" means a civil claim of the United States, arising from the activities of NASA, for such an amount, or for such specific property, as has been determined by a cognizant NASA official (e.g., the contracting officer or the NASA Board of Contract Appeals, as may be appropriate, in regard to a claim against a contractor arising under a contract; or the General Counsel, Deputy General Counsel, Assistant General Counsel for Litigation, or Chief Counsel, as appropriate, in regard to a claim arising from tortious injury to Government property).

§ 1261.403 Consultation with appropriate officials; negotiation.

The authority, pursuant to § 1261.402, to determine to forgo the collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000 exclusive of interest, to compromise a claim or to refrain from doing so, or to suspend or terminate collection action or to refrain from such action shall be exercised only after consultation with the following NASA officials or to their designees, who may be requested to negotiate the appropriate agreements or arrangements with the debtor:

(a) With respect to claims against contractors or grantees arising in connection with contracts or grants: The contracting officer.

(b) With respect to claims against commercial carriers for loss of or damage to in-transit NASA freight: The cognizant transportation officer, or the official who determined the amount of the claim, as appropriate.

(c) With respect to claims against employees of NASA incident to their employment: The personnel officer and the financial management officer of the installation concerned.

(d) With respect to all other claims: The Chief Counsel of the installation concerned; or, in the case of such claims arising out of the activities of NASA Headquarters, the Assistant General Counsel for Litigation.

§ 1261.404 Legal review.

The appropriate counsel's office shall review and concur in the following:

(a) All communications to and agreements with debtors relating to claims collection.

(b) All determinations to compromise a claim, or to suspend or terminate collection action.

(c) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.407(a).

(d) All documents releasing debtors from liability to the United States.

(e) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to § 1261.402 may affect the rights of the United States.

§ 1261.405 Services of the Inspector General.

At the request of an official designated in or pursuant to § 1261.402, the Office of the Inspector General (including regional offices) will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of debtors.

§ 1261.406 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to this subpart, the official designated in § 1261.402 will, upon demand by the debtor, prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 1261.407 Fraud false claims, misrepresentation.

Any claim which, in the opinion of an official designated in or pursuant to § 1261.402 or § 1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, The IG shall:

(a) Refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(b) If it is found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

PART 1262—EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Subpart 1262.1—General provisions

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AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504); sec. 203(c)(1) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(1)).

SOURCE: 49 FR 19441, May 8, 1984, unless otherwise noted.

Subpart 1262.1—General Provisions

§ 1262.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (hereinafter "the Act") provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications"). An eligible party may receive an award when it prevails, unless the Agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the National Aeronautics and Space Administration (NASA) will use in determining awards.

§ 1262.102 When the Act applies.

(a) The Act applies to any adversary adjudication pending before NASA (hereinafter "Agency") at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Agency action occurs. It does not include proceedings which are covered by a compromise or settlement agreement, unless specifically consented to in such agreement.

(b) As used in this part: (1) "Adversary adjudication" means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license; and (2) "adjudicative officer" means the deciding official, without regard to whether the official is designated an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

§ 1262.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Agency. These are adjudications under 5 U.S.C. 554 in which the position of NASA or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Any proceeding in which this Agency may prescribe a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise adversary adjudications. At this time, the Agency has no proceeding within the Act's ambit. A 30-day notice in the FEDERAL REGISTER will be issued for any prospective proceeding to be governed by this part.

(b) NASA may also designate a proceeding as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Agency's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act;

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whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 1262.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses the applicant must be a party to the adversary adjudication for which an award is sought. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart 1262.2.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 1262.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail. The burden of proof that an award should not be made to an eligible prevailing applicant is on the agency, which may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 1262.106 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $ 75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which this Agency pays expert witnesses, which is $20 an hour (3 hours maximum) or maximum daily rate of $100.00 (3 days maximum). However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar service, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the application;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 1262.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Agency may adopt regulations providing that attorney fees may be awarded as a rate higher than $ 75 per hour in some or all of the types of proceedings covered by this part. This Agency will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553).

(b) Any person may file with the Agency a petition for rulemaking to increase the maximum rate for attorney fees. The petition should be addressed to the General Counsel, NASA Headquarters, Washington, D.C. 20546; should identify the rate the petitioner believes the Agency should establish and the types of proceedings in which the rate should be used; and should also explain fully the reasons why the higher rate is warranted. The Agency will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding or denying the petition, or taking other appropriate action.

§ 1262.108 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before NASA, the award or an appropriate portion of the award shall be made against that agency if it had taken a position that is not substantially justified.

§ 1262.109 Delegations of authority.

(a) The NASA Administrator hereby delegates authority to the General Counsel or his/her designee to take final action on matters pertaining to the Act.

(b) The NASA Administrator may, in particularly specified matters under the Act, delegate authority to officials other than those listed in paragraph (a) of this section.

Subpart 1262.2—Information Required from Applicants

§ 1262.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought.

The application shall show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if the applicant:

(1) Attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) States that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expense for which an award is sought.

(d) The application may also include any other matters that the applicant wishes this Agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 1262.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1262.104(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The materials in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If adjudicative officer finds that the information should not be withheld from discloure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Agency's regulations under the Freedom of Information Act, at 14 CFR Part 1206.

§ 1262.203 Documentation of fees and expenses

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement, accompanied by an oath or affirmation under penalty of perjury (28 U.S.C. 1746), shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may, in addition, require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 1262.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the latter of:

(1) The date on which the adjudicative officer's initial decision or other recommended disposition of the merits of the proceeding is issued;

(2) The date on which an order is issued disposing of any petitions for reconsideration;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed; or

(4) The date of a final order or any other final resolution of the proceeding, such as a settlement or a voluntary dismissal, which is not subject to a petition for reconsideration.

Subpart 1262.3—Procedures for Considering Applications

§ 1262.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1262.202(b) for confidential financial information.

§ 1262.302 Answer to application.

(a) Within 30 calendar days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 calendar days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1262.306.

§ 1262.303 Reply.

Within 15 calendar days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1262.306.

§ 1262.304 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments about an application within 30 calendar days after it is served, or about an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1262.305 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1262.306 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary to full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1262.307 Decision.

The adjudicative officer shall issue an initial decision on the application within 90 calendar days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision: (a) The applicant's eligibility and status as a prevailing party; (b) whether the Agency's position was substantially justified; (c) whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust; and (d) the amounts, if any, awarded for fees and expenses with an explanation of the reasons for any difference between the amount requested and the amount awarded. Further, if the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1262.308 Agency review.

(a) Within 30 calendar days of the receipt of the adjudicative officer's initial decision on the fee application, either the applicant or agency counsel may seek reconsideration of the decision; or, the NASA Administrator, upon the recommendation of the General Counsel, may decide to review the decision based on the record. Whether to review a decision is solely a matter within the discretion of the NASA Administrator. A 15-day notice of such review will be given the applicant and agency counsel, and a determination made not later than 45 days from the date of notice. The Administrator may make a final determination concerning the application or remand the application to the adjudicative officer for further proceedings.

(b) If neither the applicant nor agency counsel seek reconsideration, and the NASA Administrator does not on his/her own initiative take a review, the adjudicative officer's initial decision on the fee application shall become a final decision of the Agency 45 days after it is issued.

§ 1262.309 Judicial review.

Judicial review of final Agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1262.310 Payment of award.

(a) An applicant seeking payment of an award shall submit to the paying agency a copy of the Agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The submission to NASA should be addressed as follows:

Director, Financial Management Division,
NASA Headquarters, Washington, DC
20546

(b) The Agency will pay the amount awarded to the applicant within 60 days, if feasible, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

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